

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/1. INTRODUCTION/301. Commonhold: the relevant legislation.

COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)

1. INTRODUCTION

301. Commonhold: the relevant legislation.

Part 1 of the Commonhold and Leasehold Reform Act 2002¹ introduces a scheme for the ownership of freehold land² called commonhold³. The provisions of Part 1 of the 2002 Act bind the Crown⁴.

Land which is held as commonhold⁵ is divided into units⁶ whose freehold is owned by unit-holders⁷. Those parts of the land which are not held as units are held as common parts⁸ owned by the commonhold association⁹. This association is charged with responsibility both for managing the common parts and for enforcing rights and responsibilities between unit-holders¹⁰. The relations between unit-holders and the commonhold association are defined by the commonhold community statement which contains the rights and duties applicable to that commonhold¹¹.

Various matters under Part 1 of the Commonhold and Leasehold Reform Act 2002 must or may be prescribed by regulations¹². The Commonhold Regulations 2004¹³ make provision in England and Wales for land to be registered as a freehold estate in commonhold land¹⁴; and the Commonhold (Land Registration) Rules 2004¹⁵ provide for applications to the Chief Land Registrar under Part 1 of the 2002 Act, the form of the documentation which must accompany any application and the circumstances in which an application may be cancelled by the registrar¹⁶.

Rules of court or rules of procedure for a tribunal¹⁷ may make provision about proceedings brought under or by virtue of any provision of Part 1 of the Commonhold and Leasehold Reform Act 2002¹⁸, or in relation to commonhold land¹⁹.

Under the Commonhold and Leasehold Reform Act 2002, the Lord Chancellor may give financial assistance to any person²⁰ in relation to the provision by that person of information, training or general advice about, or a dispute resolution service in connection with:

- 1 (1) any aspect of the law of commonhold land, so far as relating to residential matters; or
- 2 (2) any other matter relating to commonhold land and residential matters²¹.

Financial assistance may be given in such form and on such terms as the Lord Chancellor thinks appropriate²² and those terms may, in particular, require repayment in specified circumstances²³.

1 le the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70). All the provisions relating to commonhold are contained in Pt 1; Pt 2 (ss 71-179) makes reform to residential leasehold law, where commonhold does not or cannot apply. The Act received royal assent on 1 May 2002 and its provisions were to be brought into force in accordance with provision made by order made by the Lord Chancellor: see s 181(1), (4)(a). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. At the date at which this title states the law, all the provisions of Pt 1, with the exception of s 21(4), (5) (see

PARA 350), were in force: see the Commonhold and Leasehold Reform Act 2002 (Commencement No 4) Order 2004, SI 2004/1832, art 2.

2 'Land' includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land: see the Law of Property Act 1925 s 205(1) (ix); and **REAL PROPERTY** vol 39(2) (Reissue) PARA 72 (definition applied by the Commonhold and Leasehold Reform Act 2002 s 69(3)). 'Land' also includes land covered with water: see the Land Registration Act 2002 s 132(1); and **LAND REGISTRATION** (definition applied by the Commonhold and Leasehold Reform Act 2002 s 69(3)). As to land which may not be held as commonhold land see PARA 304.

As to the ownership of land generally see **REAL PROPERTY**. The Law of Property Act 1925 s 1(1) (see **REAL PROPERTY** vol 39(2) (Reissue) PARA 45) provides that only two estates in land are capable of subsisting or of being conveyed or created at law:

- 1 (1) a term of years absolute ('leasehold'), which means a term of years (taking effect in possession or reversion, whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest) (see s 205(1) (xxvii); definition applied by the Commonhold and Leasehold Reform Act 2002 s 69(3)) (see **REAL PROPERTY** vol 39(2) (Reissue) PARA 100 et seq); and
- 2 (2) an estate in fee simple absolute in possession ('freehold') (see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq).

3 'Commonhold' was adopted as a term in order to convey both the notion of land ownership and the element of community of interests and co-operation in management which is intrinsic in the scheme: see *Commonhold: Freehold Flats and Freehold Ownership of other Interdependent Buildings: Report of a Working Group* (Cm 179) (1987). The working group had been set up by the Law Commission at the request of the Lord Chancellor to put forward a scheme to regulate relations in complex developments between the owners of separate properties which lie in close proximity to each other and are interdependent: see 474 HL Official Report (5th series), 6 May 1986, col 697 per Lord Hailsham of Saint Marylebone LC. This followed the publication of *Transfer of Land: The Law of Positive and Restrictive Covenants* (Law Com no 127) (1984), which proposed a new general scheme of land obligations to replace, in relation to freehold land, the existing system of positive and restrictive covenants (although any link that may have existed between commonhold legislation and the proposals for land obligations has now been lost).

4 Commonhold and Leasehold Reform Act 2002 s 63.

5 Commonhold is applicable to certain registered freehold titles only: see the Commonhold and Leasehold Reform Act 2002 s 1(1)(a); and PARA 302. As to the meaning of 'commonhold land' see PARA 302. As to the registration of a freehold estate in commonhold land see PARA 320; and as to the registration of land generally see **LAND REGISTRATION**.

6 As to the meaning of 'commonhold unit' see PARA 330.

7 As to the meaning of 'unit-holder' see PARA 331.

8 As to the meaning of 'common parts' see PARA 332.

9 As to the meaning of 'commonhold association' see PARA 305. Each of the unit-holders has an interest in the commonhold association (see PARA 310), which is a private company limited by guarantee (see PARA 305). Provision is made in the Commonhold and Leasehold Reform Act 2002 for termination of the commonhold association: see PARAS 355-361.

10 As to the duties imposed on the commonhold association see PARAS 320, 325, 335-313.

11 As to the meaning of 'commonhold community statement' see PARA 311; and as to the content of the statement see PARA 312 et seq.

12 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1, 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations see further s 64(2), (3).

13 In the Commonhold Regulations 2004, SI 2004/1829, which came into force on 27 September 2004: see reg 1(1).

14 The Commonhold Regulations 2004, SI 2004/1829, Pt I (regs 1, 2) contains general provisions (see in particular PARA 331); Pt II (regs 3-7) contains provisions about the registration of a freehold estate in land as a freehold estate in commonhold land (see PARAS 303, 314, 324, 330); Pt III (regs 8-11): (1) contains provisions which the commonhold community statement must contain when defining the extent of a commonhold unit (see PARA 330); (2) requires notice to be given to the registrar when an amendment is made to a commonhold community statement redefining the extent of a commonhold unit over which there is a registered charge and requires the registrar to alter the register to reflect the application of the Commonhold and Leasehold Reform Act 2002 s 24(4) or (5) (see PARA 352); and (3) prescribes the conditions which must be met before a term of years absolute in the whole or part of a residential commonhold unit may be granted (see PARA 344); the Commonhold Regulations 2004, SI 2004/1829, Pt IV (regs 12-16) specifies the requirements for the name of a commonhold association, makes provision for the form and content of the commonhold community statement and the memorandum and articles of association of a commonhold association and specifies the forms to be used in accordance with the commonhold community statement of a commonhold (see PARAS 306, 311); Pt V (regs 17, 18) contains provisions dealing with the operation of a commonhold (see PARAS 317, 337); and Pt VI (reg 19) makes provision for termination of a commonhold (see PARAS 355, 359).

15 In the Commonhold (Land Registration) Rules 2004, SI 2004/1830, which came into force on 27 September 2004: see r 1.

16 See PARAS 306, 314 et seq, 332, 334, 313, 356, 359-360, 344, 350, 352.

17 In Acts passed after 1889, in relation to any court, 'rules of court' means rules made by the authority having power to make rules or orders regulating the practice of that court: see the Interpretation Act 1978 Sch 1, Sch 2 para 4(1)(a); and **STATUTES** vol 44(1) (Reissue) PARA 1386. The power of the authority to make such rules of court includes power to make such rules for the purpose of any Act which directs or authorises anything to be done by rules of court: Sch 1.

At the date at which this volume states the law, no rules of court had been made for the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1.

For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1, 'court' means the High Court or a county court: s 66(1). As to the High Court see **COURTS** vol 10 (Reissue) PARA 602 et seq; and as to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq. Provision made by or under Pt 1 conferring jurisdiction on a court is subject to provision made under the Courts and Legal Services Act 1990 s 1 (allocation of business between High Court and county courts) (see **COURTS** vol 10 (Reissue) PARA 579): Commonhold and Leasehold Reform Act 2002 s 66(2). A power under Pt 1 to confer jurisdiction on a court includes power to confer jurisdiction on a tribunal established under an enactment: s 66(3). The Commonhold Regulations 2004, SI 2004/1829, reg 17 confers jurisdiction on the court in connection with commonhold: see PARA 337. As to statutory tribunals see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 13 et seq; **COURTS** vol 10 (Reissue) PARAS 809 et seq, 852.

18 Commonhold and Leasehold Reform Act 2002 s 66(4)(a).

19 Commonhold and Leasehold Reform Act 2002 s 66(4)(b).

20 In any enactment, 'person' includes a body of persons, corporate or incorporate: see the Interpretation Act 1978 Sch 1.

21 Commonhold and Leasehold Reform Act 2002 s 62(1) (amended by the Housing and Regeneration Act 2008 s 319(1)).

22 Commonhold and Leasehold Reform Act 2002 s 62(2).

23 Commonhold and Leasehold Reform Act 2002 s 62(3).

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302. Commonhold land: basic requirements.

Land¹ is 'commonhold land'² if the following conditions are met³:

- 3 (1) the freehold estate in the land⁴ is registered⁵ as a freehold estate in commonhold land⁶;
- 4 (2) the land is specified in the memorandum of association of a commonhold association⁷ as the land in relation to which the association is to exercise functions⁸; and
- 5 (3) a commonhold community statement⁹ makes provision for rights and duties of the commonhold association and unit-holders¹⁰ (whether or not the statement has come into force)¹¹.

In the case of a new development, registration under head (1) above takes place on application by the developer; but an existing leasehold development cannot be converted into commonhold unless the leaseholders first acquire the freehold. The freehold may be acquired either by negotiation and agreement with the freehold owners or by means of collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993, which is described elsewhere in this work¹². An application for first registration of the freehold title to the land¹³ may be submitted at the same time as the application to register the land as commonhold, and the Land Registry will complete the first registration application before the commonhold application is considered¹⁴.

1 As to the meaning of 'land' see PARA 301 note 2.

2 Land which is subject to compulsory purchase may cease to be commonhold land: see the Commonhold and Leasehold Reform Act 2002 s 60; and PARA 353.

3 Commonhold and Leasehold Reform Act 2002 s 1(1).

4 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

5 As to the meaning of 'registered' see PARA 309 note 10.

6 Commonhold and Leasehold Reform Act 2002 s 1(1)(a). As to the registration of freehold estate in commonhold land see PARA 320.

7 As to the memorandum of association of a commonhold association see PARA 306; and as to the meaning of 'commonhold association' see PARA 305.

8 Commonhold and Leasehold Reform Act 2002 s 1(1)(b). For the purposes of Pt 1 (ss 1-70), a reference to 'a commonhold' is a reference to land in relation to which a commonhold association exercises functions (see s 1(2)), and a reference to a commonhold association exercising functions in relation to commonhold land includes a reference to a case where a commonhold association would exercise functions in relation to commonhold land but for the fact that the time in question falls in a transitional period (see s 8(6)). As to the meaning of 'transitional period' see PARA 323.

The vesting in the commonhold association of the fee simple in possession in the common parts of a commonhold is provided for in s 7 (see PARA 322) and s 9 (see PARA 324): s 1(4). As to the fee simple in possession see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91. As to the meaning of 'common parts' see PARA 332.

9 As to the meaning of 'commonhold community statement' see PARA 311; and as to the content of the statement see PARA 312 et seq.

10 In the application of the Commonhold and Leasehold Reform Act 2002 s 1(1)(c) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(a). As to the meanings of 'unit-holder' and 'joint unit-holder' see PARA 331.

11 Commonhold and Leasehold Reform Act 2002 s 1(1)(c).

12 As to collective enfranchisement see **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1552 et seq.

13 As to first registration see **LAND REGISTRATION** vol 26 (2004 Reissue) para 826 et seq.

14 See Land Registry Practice Guide no 60 *Commonhold* (June 2009) para 4.1.

UPDATE

302 Commonhold land: basic requirements

TEXT AND NOTES 7, 8--Commonhold and Leasehold Reform Act 2002 s 1(1)(b) amended: SI 2009/1941.

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303. Multiple site commonholds.

A commonhold¹ may include two or more parcels of land², whether or not contiguous³. However, land specified in the memorandum of association of a commonhold association⁴ is not commonhold land⁵ unless a single commonhold community statement⁶ provides for all the land⁷.

Regulations may make provision about an application for the registration of commonhold land⁸ made jointly by two or more persons⁹, each of whom is the registered freeholder¹⁰ of part of the land to which the application relates¹¹. For the purposes of such an application, the statutory provision defining a commonhold unit¹² is modified by the relevant regulations¹³.

1 As to the meaning of 'a commonhold' see PARA 302 note 8.

2 As to the meaning of 'land' see PARA 301 note 2.

3 Commonhold and Leasehold Reform Act 2002 s 57(1).

4 As to the memorandum of association of a commonhold association see PARA 306; and as to the meaning of 'commonhold association' see PARA 305.

5 Ie the Commonhold and Leasehold Reform Act 2002 s 1(1) (see PARA 302) is not satisfied in relation to the land. As to the meaning of 'commonhold land' see PARA 302.

6 As to the meaning of 'commonhold community statement' see PARA 311; and as to the content of the statement see PARA 312.

7 Commonhold and Leasehold Reform Act 2002 s 57(2).

8 Ie an application made under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320. As to the registration of land generally see **LAND REGISTRATION**.

9 As to the meaning of 'person' see PARA 301 note 20.

10 As to the meaning of 'registered freeholder' see PARA 320 note 4.

11 Commonhold and Leasehold Reform Act 2002 s 57(3). These regulations may, in particular:

3 (1) modify the application of a provision made by or by virtue of Pt 1 (s 57(4)(a));

4 (2) disapply the application of a provision made by or by virtue of Pt 1 (s 57(4)(b));

5 (3) impose additional requirements (s 57(4)(c)).

12 Ie the Commonhold and Leasehold Reform Act 2002 s 11: see PARA 330.

13 See the Commonhold Regulations 2004, SI 2004/1829, reg 7; and PARA 330.

UPDATE

303 Multiple site commonholds

TEXT AND NOTE 1--Commonhold and Leasehold Reform Act 2002 s 57(2) amended: SI 2009/1941.

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304. Land which may not be registered as commonhold land.

An application for the registration of commonhold land¹ may not relate wholly or partly to land² of the following kinds³:

- 6 (1) land which is above ground level ('raised land', in an arrangement which is commonly known as a 'flying freehold') unless all the land between the ground and the raised land is the subject of the same application⁴;
- 7 (2) land which is:
 - 1 1. (a) agricultural land within the meaning of the Agriculture Act 1947⁵;
 - 2 2. (b) comprised in a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986⁶; or
 - 3 3. (c) comprised in a farm business tenancy for the purposes of the Agricultural Tenancies Act 1995⁷; or
- 2 8 (3) land where an estate in the whole or part of the land to which the application relates is a contingent estate⁸.

Since commonhold is a freehold estate registered as a freehold estate in commonhold land⁹, it follows that a commonhold may not be established on a leasehold title¹⁰.

1 le an application made under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320. As to the meaning of 'commonhold land' see PARA 302.

2 As to the meaning of 'land' see PARA 301 note 2.

3 Commonhold and Leasehold Reform Act 2002 Sch 2.

4 Commonhold and Leasehold Reform Act 2002 Sch 2 para 1(1). An application for the addition of land to a commonhold in accordance with s 41 (see PARA 325) may be made wholly or partly in relation to raised land if all the land between the ground and the raised land forms part of the commonhold to which the raised land is to be added: Sch 2 para 1(2). As to the meaning of 'a commonhold' see PARA 302 note 8.

5 Commonhold and Leasehold Reform Act 2002 Sch 2 para 2(a). As to the meaning of 'agricultural land' see the Agriculture Act 1947 s 109(1); and **AGRICULTURAL LAND** vol 1 (2008) PARA 324.

6 Commonhold and Leasehold Reform Act 2002 Sch 2 para 2(b). As to the meaning of 'tenancy of an agricultural holding' see the Agricultural Holdings Act 1986 s 1(1); and **AGRICULTURAL LAND** vol 1 (2008) PARA 323.

7 Commonhold and Leasehold Reform Act 2002 Sch 2 para 2(c). As to the meaning of 'farm business tenancy' see the Agricultural Tenancies Act 1995 s 1; and **AGRICULTURAL LAND** vol 1 (2008) PARA 302.

8 Commonhold and Leasehold Reform Act 2002 Sch 2 para 3(1). For these purposes, an estate is contingent if (and only if):

- 6 (1) it is liable to revert to or vest in a person other than the present registered proprietor on the occurrence or non-occurrence of a particular event (Sch 2 para 3(2)(a)); and
- 7 (2) the reverter or vesting would occur by operation of law as a result of any of the following enactments (Sch 2 para 3(2)(b)):

1. (a) the School Sites Act 1841 (conveyance for use as school: see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1354) (Commonhold and Leasehold Reform Act 2002 Sch 2 para 3(3)(a));
1
2. (b) the Lands Clauses Acts (ie the Lands Clauses Consolidation Act 1845 (compulsory purchase): see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 509 et seq) (Commonhold and Leasehold Reform Act 2002 Sch 2 para 3(3)(b));
2
3. (c) the Literary and Scientific Institutions Act 1854 (sites for institutions: see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 948) (Commonhold and Leasehold Reform Act 2002 Sch 2 para 3(3)(c)); and
3
4. (d) the Places of Worship Sites Act 1873 (sites for places of worship: see **ECCLESIASTICAL LAW**) (Commonhold and Leasehold Reform Act 2002 Sch 2 para 3(3)(d)).
4

The enactments referred to in heads (a), (c) and (d) above must, however, be read in the light of the Reverter of Sites Act 1987 ss 1, 7 (right of reverter replaced by trust): see **CHARITIES** vol 8 (2010) PARA 70. As to the meaning of 'person' see PARA 301 note 20. As to the meaning of 'registered' see PARA 309 note 10; and as to the registered proprietor of an estate in land see **LAND REGISTRATION**.

Regulations may amend the Commonhold and Leasehold Reform Act 2002 Sch 2 para 3(3) so as to: (i) add an enactment to the list (Sch 2 para 3(4)(a)); or (ii) remove an enactment from the list (Sch 2 para 3(4)(b)). At the date at which this volume states the law, no regulations had been made for the purposes of Sch 2 para 3.

9 See the Commonhold and Leasehold Reform Act 2002 s 2(1); and PARA 320.

10 As to collective enfranchisement as a prelude to conversion to commonhold see PARA 302.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(i) Establishment of the Commonhold Association/305. Constitution of the commonhold association.

2. ESTABLISHING COMMONHOLD

(1) PREPARING THE DOCUMENTATION

(i) Establishment of the Commonhold Association

305. Constitution of the commonhold association.

A 'commonhold association' is a private company limited by guarantee¹ the memorandum of which²:

- 9 (1) states that an object³ of the company is to exercise the functions of a commonhold association⁴ in relation to specified commonhold land⁵; and
- 10 (2) specifies £1 as the amount required to be specified in pursuance of the Companies Act 1985⁶ or, as from 1 October 2009, in pursuance of the Companies Act 2006⁷.

The requirements for registration of such a company under the companies legislation are dealt with elsewhere in this work⁸.

1 A 'private company' means a company that is not a public company: Companies Act 1985 s 1(3) (repealed as from 1 October 2009 by the Companies Act 2006 Sch 16), applied by the Commonhold and Leasehold Reform Act 2002 s 69(3). As from 1 October 2009, the Companies Act 1985 s 1(3) is repealed by the Companies Act 2006 Sch 16 and replaced by the Companies Act 2006 s 4(1), which contains a similar definition of a private company. A 'company limited by guarantee' means a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up: Companies Act 1985 s 1(2)(b) (similarly repealed), applied by the Commonhold and Leasehold Reform Act 2002 s 69(3). As from 1 October 2009, the Companies Act 1985 s 1(2)(b) is replaced by the Companies Act 2006 s 3(2), which provides that if the members' liability is limited to such amount as they undertake to contribute to the assets of the company in the event of its being wound up, the company is 'limited by guarantee'. See further **COMPANIES** vol 14 (2009) PARA 102 et seq. As to the memorandum of association of a commonhold association see PARAS 306-307.

2 Commonhold and Leasehold Reform Act 2002 ss 1(3), 34(1).

3 'Object' in relation to a commonhold association means an object stated in the association's memorandum of association in accordance with the Companies Act 1985 s 2(1)(c) (repealed as from 1 October 2009 by the Companies Act 2006 Sch 16) (see **COMPANIES** vol 14 (2009) PARA 104): Commonhold and Leasehold Reform Act 2002 s 69(1). As from 1 October 2009, the memorandum of association of a company must be in the prescribed form: see the Companies Act 2006 s 8(2); and the Companies (Registration) Regulations 2008, SI 2008/3014. Special provision is, however, made with regard to the memorandum of association of a commonhold association: see PARAS 306-307.

4 As to the exercise by a commonhold association of functions in relation to commonhold land see PARA 302 note 8.

5 Commonhold and Leasehold Reform Act 2002 s 34(1)(a). As to the meaning of 'commonhold land' see PARA 302. A company which is a commonhold association cannot be an RTM company for the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 2 Ch 1 (ss 71-113) (see s 73(1); and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 374) or an RTE company for the purposes of the right to collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 Pt I Ch 1 (ss 1-38) (see s 4A(2) (not yet in force); and **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1581).

A commonhold association which exercises functions in relation to any commonhold premises is to be treated as a person who manages the premises for the purposes of the Disability Discrimination Act 1995 s 22(3) (unlawful discrimination against a disabled person occupying premises: see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 600); Disability Discrimination (Premises) Regulations 2006, SI 2006/887, reg 8(1).

6 As to the requirement for an amount to be specified see the Companies Act 1985 s 2(4) (repealed as from 1 October 2009 by the Companies Act 2006 Sch 16); and **COMPANIES** vol 14 (2009) PARA 104.

7 Commonhold and Leasehold Reform Act 2002 s 34(1)(b). As to the requirement for an amount to be specified under the Companies Act 2006 see s 11(3).

8 See **COMPANIES** vol 14 (2009) PARA 79 et seq.

UPDATE

305 Constitution of the commonhold association

TEXT AND NOTES 1-7--Commonhold and Leasehold Reform Act 2002 s 34(1) substituted, s 69(1), (3) amended: SI 2009/1941.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(i) Establishment of the Commonhold Association/306. Memorandum and articles of commonhold association; in general.

306. Memorandum and articles of commonhold association; in general.

Regulations must make provision about the form and content of the memorandum¹ and articles²; and a commonhold association may adopt provisions of the regulations for its memorandum or articles³. The regulations may include provision which is to have effect for a commonhold association whether or not it is so adopted⁴; and a provision of the memorandum or articles has no effect to the extent that it is inconsistent with the regulations⁵.

Regulations may also provide:

- 11 (1) that the name by which a commonhold association is registered under the companies legislation⁶ must satisfy specified requirements⁷; and
- 12 (2) that the name by which a company other than a commonhold association is registered may not include a specified word or expression⁸.

The name by which a commonhold association is registered under the companies legislation must end with 'commonhold association limited'⁹ or, if the memorandum of association states that the commonhold association's registered office is to be situated in Wales, those words or the Welsh equivalent ('Cymdeithas Cydradd-Ddaliad Cyfyngedig')¹⁰; and the name by which a company other than a commonhold association is registered may not end with 'commonhold association limited' or the Welsh equivalent¹¹.

At the date at which this volume states the law, and subject to the provisions of the Companies Act 1985, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles¹². Money payable by a member to the company under the memorandum or articles is a debt due from him to the company, and in England and Wales is of the nature of a specialty debt¹³. With effect from 1 October 2009, the provisions of a company's constitution (including the articles)¹⁴ bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions¹⁵ and money payable by a member to the company under its constitution is a debt due from him to the company, but in England and Wales it is of the nature of an ordinary contract debt¹⁶.

Up-to-date copies of the memorandum and articles of association must be kept at the registered office of the commonhold association and any unit-holder has the right, on reasonable notice and at a reasonable time and place, to inspect them¹⁷.

1 For these purposes, 'memorandum' means the memorandum of association of a commonhold association: Commonhold and Leasehold Reform Act 2002 Sch 3 para 1(a). As to the meaning of 'commonhold association' see PARA 305.

2 Commonhold and Leasehold Reform Act 2002 Sch 3 para 2(1). For these purposes, 'articles' means the articles of association of a commonhold association: Sch 3 para 1(b). A unit-holder may apply to the court for a declaration that the memorandum or articles of association of the relevant commonhold association do not comply with the regulations made under Sch 3 para 2: see s 40; and PARA 340. As to the meaning of 'unit-holder' see PARA 331; and as to the meaning of 'court' see PARA 301 note 17. Regulations have effect in relation to a memorandum or articles irrespective of the date of the memorandum or articles but subject to any transitional

provision of the regulations: Sch 3 para 2(5). For the prescribed form and content of the memorandum and articles see the Commonhold Regulations 2004, SI 2004/1829, Schs 1, 2; and PARAS 307-308.

The Companies Act 1985 s 2(7) (alteration of conditions contained in the memorandum: see **COMPANIES** vol 14 (2009) PARA 104), s 3 (forms of memorandum: see **COMPANIES** vol 14 (2009) PARA 104), s 8 (Tables A, C, D and E: see **COMPANIES** vol 14 (2009) PARA 116) (all repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16) do not apply to a commonhold association: Commonhold and Leasehold Reform Act 2002 Sch 3 para 4(1).

3 Commonhold and Leasehold Reform Act 2002 Sch 3 para 2(2). See note 2.

4 Commonhold and Leasehold Reform Act 2002 Sch 3 para 2(3). See note 2.

5 Commonhold and Leasehold Reform Act 2002 Sch 3 para 2(4). See note 2.

6 As to registration under the Companies Act 1985 or the Companies Act 2006 see **COMPANIES** vol 14 (2009) PARA 131 et seq.

7 Commonhold and Leasehold Reform Act 2002 Sch 3 para 16(a). For the purposes of the Companies Act 1985 s 12 (repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16 and replaced by provisions of the Companies Act 2006 ss 13, 14) (duty of registrar: see **COMPANIES** vol 14 (2009) PARA 111) as it applies to a commonhold association, a reference to the requirements of the Companies Act 1985 is treated as including a reference to a provision of or made under the Commonhold and Leasehold Reform Act 2002 Sch 3: Sch 3 para 17.

8 Commonhold and Leasehold Reform Act 2002 Sch 3 para 16(b).

9 For these purposes, references to the words 'limited' and 'cyfyngedig' include the abbreviations 'ltd' and 'cyf': Commonhold Regulations 2004, SI 2004/1829, reg 12(3).

10 See the Commonhold Regulations 2004, SI 2004/1829, reg 12(1). See also note 9.

11 See the Commonhold Regulations 2004, SI 2004/1829, reg 12(2). See also note 9.

12 See the Companies Act 1985 s 14(1) (repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16).

13 See the Companies Act 1985 s 14(2) (repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16).

14 See the Companies Act 2006 s 17 (in force with effect from 1 October 2009).

15 See the Companies Act 2006 s 33(1) (in force with effect from 1 October 2009).

16 See the Companies Act 2006 s 33(2) (in force with effect from 1 October 2009).

17 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 75.

UPDATE

306 [... articles of commonhold association; in general

TEXT AND NOTES--References to memorandum omitted: Commonhold and Leasehold Reform Act 2002 Sch 3 paras 1, 2, 16, 17 (Sch 3 para 1 substituted, Sch 3 paras 2, 16, 17 amended, Sch 3 para 4 repealed, by SI 2009/1941). SI 2004/1829 Sch 2 substituted: SI 2009/2363.

NOTE 10--SI 2004/1829 reg 12(1) amended: SI 2009/2363.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(i) Establishment of the Commonhold Association/307. Memorandum of association of a commonhold association: prescribed form and content.

307. Memorandum of association of a commonhold association: prescribed form and content.

The memorandum of association¹ of a commonhold association² must be in the prescribed form³ or a form to the same effect⁴ and must contain all the provisions contained in the prescribed form⁵. In its memorandum of association, a commonhold association must:

- 13 (1) include the name of the commonhold association on the front page and in the first paragraph⁶;
- 14 (2) state whether the registered office of the commonhold association is to be situated in 'England and Wales' or in 'Wales'⁷; and
- 15 (3) include the name of the commonhold in the statement of its objects⁸.

A commonhold association may include additional provisions in its memorandum of association immediately after the provision which appears as the final paragraph in the prescribed form⁹, where the additional provisions are preceded by a heading which must include 'additional provision specific to this commonhold association' and each new provision must be given a number¹⁰.

The memorandum of association must be signed by the subscribers, dated and witnessed¹¹.

1 As to the memorandum of association generally see PARA 306.

2 As to the meaning of 'commonhold association' see PARA 305.

3 For the prescribed form see the Commonhold Regulations 2004, SI 2004/1829, Sch 1. The memorandum must set out the name of the company (referred to as 'the commonhold association') and state whether the registered office is situated in England and Wales or in Wales: see Sch 1 paras 1, 2. It must state that the object of the commonhold association is to exercise the functions of a commonhold association in relation to named commonhold land in accordance with the commonhold community statement of that commonhold, as amended from time to time, and any provision made by or by virtue of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70) and the doing of all such things as are incidental or conducive to the attainment of that object: see the Commonhold Regulations 2004, SI 2004/1829, Sch 1 para 3. The memorandum must also state that the liability of the members is limited (see Sch 1 para 4) and must contain the following statement: 'Without prejudice to any further liability which he may have under or arising out the commonhold community statement, every member of the commonhold association undertakes to contribute such amount as may be required, not exceeding £1, to the assets of the commonhold association if it should be wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the commonhold association contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up the commonhold association, and for the adjustment of the rights of the contributories among themselves' (see Sch 1 para 5).

4 Commonhold Regulations 2004, SI 2004/1829, reg 13(1).

5 Commonhold Regulations 2004, SI 2004/1829, reg 13(2). Each provision in Sch 1 will have effect for a commonhold association whether or not it is adopted under the Commonhold and Leasehold Reform Act 2002 Sch 3 para 2(2) (see PARA 306): Commonhold Regulations 2004, SI 2004/1829, reg 13(2).

6 See the Commonhold Regulations 2004, SI 2004/1829, reg 13(3)(a).

7 See the Commonhold Regulations 2004, SI 2004/1829, reg 13(3)(b).

8 See the Commonhold Regulations 2004, SI 2004/1829, reg 13(3)(c).

9 le the provision which appears as the Commonhold Regulations 2004, SI 2004/1829, Sch 1 para 5 (see note 3).

10 See the Commonhold Regulations 2004, SI 2004/1829, reg 13(4).

11 See the Commonhold Regulations 2004, SI 2004/1829, Sch 1.

UPDATE

307 Memorandum of association of a commonhold association: prescribed form and content

TEXT AND NOTES--Revoked: SI 2009/2363.

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ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(i) Establishment of the Commonhold Association/308. Articles of association of a commonhold association: prescribed form and content.

308. Articles of association of a commonhold association: prescribed form and content.

The articles of association¹ of a commonhold association² must be in the prescribed form³ or a form to the same effect⁴ and must, subject to certain exceptions⁵, contain all the provisions in the prescribed form⁶. The prescribed provisions relate to:

- 16 (1) interpretation of the articles⁷;
- 17 (2) membership and the register of members⁸;
- 18 (3) annual general meetings⁹ and convening general meetings¹⁰;
- 19 (4) the period of notice of a general meeting¹¹, the contents of the notice¹² and entitlement to receive the notice¹³;
- 20 (5) proceedings at general meetings¹⁴;
- 21 (6) the votes of members¹⁵;
- 22 (7) the number of directors, which must not be less than two¹⁶;
- 23 (8) the appointment and retirement of directors¹⁷;
- 24 (9) disqualification and removal of directors¹⁸;
- 25 (10) the powers of directors¹⁹;
- 26 (11) agents²⁰;
- 27 (12) delegation of the directors' powers²¹;
- 28 (13) the remuneration of directors²²;
- 29 (14) directors' expenses²³;
- 30 (15) directors' appointments and interests²⁴;
- 31 (16) the proceedings of directors²⁵;
- 32 (17) the secretary²⁶;
- 33 (18) minutes of appointments of officers and proceedings at meetings²⁷;
- 34 (19) the prohibition of any distribution of profits or assets, except in accordance with a termination statement or in a winding up²⁸;
- 35 (20) members' rights to inspect and copy books and records²⁹;
- 36 (21) the manner of giving notices³⁰; and
- 37 (22) indemnity for directors and officers³¹.

A commonhold association may include additional provisions in its articles of association where each additional provision is immediately preceded by a heading which must include 'additional provision specific to this commonhold association' and is identified with the numeral of the immediately preceding article followed by a capital letter, such letters to be allocated in alphabetical order in respect of each number³².

In its articles of association a commonhold must include the name of the commonhold association on the front page³³.

The articles must be signed by the subscribers to the memorandum of association³⁴, dated and witnessed³⁵.

1 As to the articles of association generally see PARA 306.

2 As to the meaning of 'commonhold association' see PARA 305.

3 For the prescribed form see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 (amended by SI 2007/1898). See also heads (1)-(22) in the text.

4 Commonhold Regulations 2004, SI 2004/1829, reg 14(1).

5 be subject to the Commonhold Regulations 2004, SI 2004/1829, reg 14(3)-(10): see notes 11, 14-18; and the text and notes 32-33.

6 Commonhold Regulations 2004, SI 2004/1829, reg 14(2). Each provision in Sch 2 will have effect for a commonhold association whether or not it is adopted under the Commonhold and Leasehold Reform Act 2002 Sch 3 para 2(2) (see PARA 306): Commonhold Regulations 2004, SI 2004/1829, reg 14(2).

7 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 1.

8 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 2-4. See also reg 2(2)(b). As to membership of the commonhold association see also PARA 310.

9 Subject to the provisions of the companies legislation, the commonhold association must hold an annual general meeting: see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 5.

10 The directors may call general meetings and, on the requisition of members pursuant to the provisions of the companies legislation, must immediately proceed to convene a general meeting for a date not more than 28 days after the date of the notice convening the meeting. If there are insufficient directors in the United Kingdom to call a general meeting, any director or any member of the commonhold association may call a general meeting: see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 6.

11 An annual general meeting or any general meeting called for the passing of a special resolution, a unanimous resolution, a termination-statement resolution, a winding-up resolution or a resolution appointing a person as a director must be called by at least 21 clear days' notice. All other general meetings must be called by at least 14 clear days' notice but a general meeting may be called by shorter notice of at least three clear days if it is so agreed (1) in the case of an annual general meeting, by all the members entitled to attend and vote at that meeting; and (2) in the case of any other meeting, by a majority in number of the members having a right to attend and vote being a majority together holding at least 95% of the total voting rights at that meeting of all the members: Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 7. In its articles of association a commonhold association may, however, substitute any time period for the time periods in Sch 2 art 7, art 18 (adjournment: see note 14) and art 48(f) (removal of director: see note 18) except that the time period may not be reduced below the time periods mentioned in those articles: reg 14(4)(a), (10).

12 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 8, 9.

13 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 10.

14 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 11-26. See also reg 14(4)(a), cited in note 11. The quorum for a general meeting is one-fifth of the members of the commonhold association or two members of the commonhold association, whichever is the greater, present in person or by proxy: Sch 2 art 13. In its articles of association a commonhold association may substitute any figure for the figures in Sch 2 art 13 except that the figure may not be reduced below the figures mentioned in that article, and different provision may be made for different purposes: reg 14(4)(c), (10). A director, despite not being a member, is entitled to attend, speak and propose (but, subject to Sch 2 art 23, not vote upon) a resolution at any general meeting: Sch 2 art 17.

15 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 27-37 (Sch 2 art 29 amended by SI 2007/1898). A mortgagee who provides (1) a certificate confirming that possession has been taken of a commonhold unit; and (2) an official copy of the charges register of the title to the commonhold unit showing it as the registered proprietor of the charge, is entitled to vote in place of a member, whether on a show of hands or on a poll: see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 31. In its articles of association a commonhold association may substitute a time or date for the words 'at any time' in Sch 2 art 36 (notice of proxy): reg 14(4)(d), (10). It may also omit the words 'Failing that it may be delivered at the meeting to the chairman, secretary or to any director' from that article: reg 14(5).

16 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 38. Where the articles of association of a commonhold association contain provisions for the appointment of alternate directors, Sch 2 art 38 is to have effect for a commonhold association with '(other than alternate directors)' inserted after 'the number of directors': reg 14(7), (10).

17 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 39-47. A director need not be a member of the commonhold association: Sch 2 art 39. As to the appointment and removal of directors by the developer see reg 14(8), (9); and see further PARA 323.

18 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 48, 49. The office of a director must be vacated if (1) an ordinary resolution is passed by the members in favour of removing a director (where special notice of the resolution has been given in accordance with the companies legislation); (2) he ceases to be a director by virtue of any provision of the companies legislation or he becomes prohibited by law from being a director; or (3) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or (4) he is, or may be, suffering from mental disorder and either he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983, or an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver or other person to exercise powers with respect to his property or affairs; or (5) he resigns his office by notice to the commonhold association; or (6) he is absent for more than three consecutive months from meetings of the directors held during that period or from three consecutive meetings (whichever is the greater) without permission from the directors and the directors resolve that his office be vacated: see Sch 2 art 48. See also reg 14(4)(a), cited in note 11. In its articles of association a commonhold association may substitute any number of meetings for the number of meetings in Sch 2 art 48(f) (see head (6) above) except that the number may not be reduced below three: reg 14(4)(b), (10). As to the appointment and removal of directors by the developer see reg 14(8), (9).

19 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 50, 51. Subject to the provisions of the companies legislation, the memorandum and the articles, and to any directions given by special resolution, the directors must manage the business of the commonhold association and may exercise all the powers of the commonhold association. No alteration of the memorandum or articles and no such direction invalidates any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers so given are not limited by any special power given to the directors by the articles and the directors' powers may be exercised at a meeting at which a quorum is present: Sch 2 art 50.

20 The directors have the power on behalf of the commonhold association to appoint and enter into contracts with managing agents of the commonhold on such terms as they think fit including a term providing for cancellation of the contract and return of records and monies paid. The directors remain bound to supervise the managing agent so appointed: Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 52.

21 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 53.

22 Directors are entitled to such remuneration as the commonhold association may determine by ordinary resolution, where the directors are not members of the commonhold association, and by special resolution, where the directors are members of the commonhold association. Unless the resolution provides otherwise, the remuneration is deemed to accrue from day to day: Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 54.

23 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 55.

24 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 56-59. A commonhold association must keep a register of directors' interests: Sch 2 art 59.

25 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 60-69. All acts done by a meeting of directors, or of a committee set up by the directors, or by a person acting as a director are valid even if it is discovered later that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote: Sch 2 art 64.

26 Subject to the provisions of the companies legislation, the secretary is to be appointed by the directors for such terms, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them: Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 70.

27 The directors must cause minutes to be made in books kept for the purpose (1) of all appointments of officers made by the directors or by the developer; and (2) of all proceedings at meetings of the commonhold association and of the directors, and of committees, including the names of the persons present at each such meeting, the date of the meeting and any action agreed at the meeting: Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 71.

28 Save in accordance with a termination statement or in a winding up, the commonhold association must not distribute its profits or assets, whether in cash or otherwise, to its members: Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 72.

29 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 73-75. See also reg 2(2)(b). Subject to any statutory requirement, all books, minutes, registers, documents, or accounting records of the commonhold association must be retained for a minimum period of three years: Sch 2 art 74.

30 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 76-79. Unless otherwise stated, any notice to be given under the articles of association must be given in writing: Sch 2 art 76.

31 Subject to the provisions of the companies legislation but without affecting any indemnity to which he may otherwise be entitled, every director or other officer of the commonhold association must be indemnified out of the assets of the commonhold association against any liability incurred by him in defending any proceedings, whether civil or criminal, alleging liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the commonhold association, and in which judgment is given in his favour, or in which he is acquitted, or in connection with any application in which relief is granted to him by the court: Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 80.

32 Commonhold Regulations 2004, SI 2004/1829, reg 14(6).

33 Commonhold Regulations 2004, SI 2004/1829, reg 14(3).

34 As to the memorandum see PARAS 306, 307.

35 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2.

UPDATE

308 Articles of association of a commonhold association: prescribed form and content

TEXT AND NOTES--SI 2004/1829 Sch 2 substituted: SI 2009/2363.

NOTES 11, 14--SI 2004/1829 reg 14(4) substituted: SI 2009/2363.

NOTES 15, 16--SI 2004/1829 reg 14(5), (7) omitted: SI 2009/2363.

NOTES 17, 18--SI 2004/1829 reg 14(8), (9) amended: SI 2009/2363.

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309. Alteration of the memorandum or articles of association of a commonhold association.

Under the Companies Act 1985, a company¹ can change its memorandum of association with respect to the company's objects, or change its articles of association², by special resolution³. Provisions that immediately before 1 October 2009⁴ were contained in a company's memorandum but are not provisions of the kind included in the new-style memorandum under the Companies Act 2006⁵ are to be treated after that date as provisions of the company's articles⁶. Except in the case of entrenched provisions⁷, the Companies Act 2006 provides that the articles of association of a company can be changed by special resolution⁸.

With regard to a commonhold association, in addition to the registration requirements under the companies legislation⁹ the following provisions apply, namely that:

- 38 (1) at the date at which this volume states the law, an alteration of the memorandum or articles of association of a commonhold association; or
- 39 (2) as from 1 October 2009, where a commonhold association alters its memorandum or articles at a time when the land specified in its memorandum is commonhold land, the alteration,

has no effect until, in either case, the altered version is registered¹⁰ in accordance with the following provisions¹¹. If the commonhold association duly makes an application to alter the memorandum or articles¹² the registrar¹³ must arrange for the altered memorandum or altered articles to be kept in his custody¹⁴, and referred to in the register¹⁵, in place of the unaltered version¹⁶. Such an application¹⁷ must be accompanied by a certificate given by the directors¹⁸ of the commonhold association that the altered memorandum or articles comply with the relevant regulations¹⁹. An application to register an altered memorandum or articles of association must be made in the prescribed form²⁰ and accompanied by the prescribed fee²¹. It must also be accompanied by a new version of the memorandum or articles of association of the commonhold association incorporating the amendments²².

Where the registrar amends the register on such an application he must make any consequential amendments to the register which he thinks appropriate²³. On completion of the application, the registrar must enter a note of the altered memorandum or articles of association in the register of the title to the common parts²⁴ in a manner that distinguishes them from previous versions of the memorandum or articles of association of the commonhold association²⁵.

1 A commonhold association is a company limited by guarantee: see PARA 305.

2 As to the memorandum and articles of association of a commonhold association see PARAS 306-308.

3 See the Companies Act 1985 ss 4, 9 (both repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16); and **COMPANIES** vol 14 (2009) PARA 232.

4 The commencement date of the Companies Act 2006 Pt 2 (ss 7-16) (company formation) and the major part of Pt 3 (ss 17-38) (company's constitution): see the Companies Act 2006 (Commencement No 8, Transitional Provisions and Savings) Order 2008, SI 2008/2860, art 3(b), (c).

5 The provisions of the kind mentioned in the Companies Act 2006 s 8 (in force with effect from 1 October 2009): see **COMPANIES** vol 14 (2009) PARA 104.

6 See the Companies Act 2006 s 28(1), (2) (in force with effect from 1 October 2009); and **COMPANIES** vol 14 (2009) PARA 228.

7 As to the entrenchment of provisions see the Companies Act 2006 s 22 (in force with effect from 1 October 2009); and **COMPANIES** vol 14 (2009) PARA 233.

8 See the Companies Act 2006 s 21 (in force with effect from 1 October 2009); and **COMPANIES** vol 14 (2009) PARA 232.

9 See the Companies Act 1985 s 18 (repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16); the Companies Act 2006 ss 26, 30 (in force with effect from 1 October 2009); and **COMPANIES** vol 14 (2009) PARAS 231, 236.

10 'Registered' means registered in the register; and 'the register' means the register of title to freehold and leasehold land kept under the Land Registration Act 2002 s 1 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 810); Commonhold and Leasehold Reform Act 2002 s 67(1).

11 Commonhold and Leasehold Reform Act 2002 Sch 3 para 3(1) (amended with effect from 1 October 2009 by the Companies Act 2006 s 1283, so as to substitute for the wording set out in head (1) in the text the wording set out in head (2) in the text).

12 The under the Commonhold and Leasehold Reform Act 2002 Sch 3 para 3(2): see the text and note 16.

13 'The registrar' means the Chief Land Registrar: Commonhold and Leasehold Reform Act 2002 s 67(1). As to the Chief Land Registrar see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1066. The registrar must comply with any direction or requirement given to him or imposed on him under or by virtue of Pt 1 (ss 1-70): s 67(3). Regulations under any provision of Pt 1 may confer functions on the registrar (including discretionary functions): s 67(2). Subject to s 6(2) (see PARA 321), where the registrar thinks it appropriate in consequence of or for the purpose of anything done or proposed to be done in connection with Pt 1, he may (1) make or cancel an entry on the register; (2) take any other action: s 67(4), (5).

14 As to the registrar's duty to keep specified details and documents in his custody see PARA 320.

15 As to the meaning of 'the register' see note 10.

16 Commonhold and Leasehold Reform Act 2002 Sch 3 para 3(2). No application may be made under Sch 3 para 3(2) for the registration of a memorandum altered by special resolution in accordance with the Companies Act 1985 s 4(1) (prospectively repealed: see note 3) (see **COMPANIES** vol 14 (2009) PARA 232) unless: (1) the period during which an application for cancellation of the alteration may be made under s 5(1) (also prospectively repealed) has expired without an application being made (Commonhold and Leasehold Reform Act 2002 Sch 3 PARA 4(2)(a)); (2) any application made under the Companies Act 1985 s 5 (prospectively repealed) has been withdrawn (Commonhold and Leasehold Reform Act 2002 Sch 3 para 4(2)(b)); or (3) the alteration has been confirmed by the court under the Companies Act 1985 s 5 (Commonhold and Leasehold Reform Act 2002 Sch 3 para 4(2)(c)).

17 The an application made under the Commonhold and Leasehold Reform Act 2002 Sch 3 para 3(2): see the text and notes 12-16.

18 As to the appointment, powers and duties of the directors of a commonhold association see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 38-71; and PARA 308; and as to the appointment, powers and duties of directors of a company under the companies legislation see **COMPANIES** vol 14 (2009) PARA 483 et seq.

19 See the Commonhold and Leasehold Reform Act 2002 Sch 3 para 3(3). The regulations referred to in the text are those made under Sch 3 para 2(1), ie the Commonhold Regulations 2004, SI 2004/1829, regs 14-16, Schs 1, 2: see PARAS 306-308. Those regulations have effect in relation to a memorandum or articles irrespective of the date of the memorandum or articles but subject to any transitional provision of the regulations: see the Commonhold and Leasehold Reform Act 2002 Sch 3 para 2(5).

20 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 19(1). The prescribed form is Form CM3: r 19(1).

21 For the prescribed fee for such an application see the Land Registration Fee Order 2009, SI 2009/845, Sch 3 Pt 1 para (20).

- 22 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 19(2).
- 23 Commonhold and Leasehold Reform Act 2002 Sch 3 para 3(4).
- 24 As to the common parts see PARAS 332-334.
- 25 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 19(3).

UPDATE

309 Alteration of the memorandum or articles of association of a commonhold association

TEXT AND NOTES 11, 12, 16, 17, 19, 23--Commonhold and Leasehold Reform Act 2002 Sch 3 paras 2, 3 amended, Sch 3 para 4 revoked: SI 2009/1941.

TEXT AND NOTE 20--SI 2004/1830 r 19(1) amended: SI 2009/2024.

TEXT AND NOTE 22--SI 2004/1830 r 19(2) amended: SI 2009/2024.

TEXT AND NOTES 24, 25--SI 2004/1830 r 19(3) amended: SI 2009/2024.

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 ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(i) Establishment of the
 Commonhold Association/310. Membership of a commonhold association.

310. Membership of a commonhold association.

A person¹ may not become a member of a commonhold association² otherwise than by virtue of the following provisions³.

During the period beginning with incorporation of a commonhold association⁴ and ending when land⁵ specified in its memorandum⁶ becomes commonhold land⁷, the subscribers (or subscriber) to the memorandum are the sole members (or member) of the association⁸. The subscribers (or subscriber) to the memorandum continue during a transitional period⁹ to be members (or the member) of the association¹⁰.

A person who for the time being is the developer¹¹ in respect of all or part of the commonhold is entitled to be entered in the register of members of the association¹².

A person is entitled to be entered in the register of members of a commonhold association if he becomes the unit-holder¹³ of a commonhold unit¹⁴ in relation to which the association exercises functions¹⁵ either on the unit becoming commonhold land by registration with unit-holders¹⁶, or on the transfer of the unit¹⁷.

Where two or more persons become joint unit-holders¹⁸ of a commonhold unit¹⁹, and they nominate one of themselves for this purpose²⁰, he is entitled to be entered in the register of members of the commonhold association which exercises functions in relation to the unit²¹. Such a nomination must be made in writing²² to the commonhold association²³, and be received by the association before the end of the prescribed²⁴ period²⁵. If no nomination is received by the association before the end of the prescribed period, the person whose name appears first in the proprietorship register²⁶ is, on the expiry of that period, entitled to be entered in the register of members of the association²⁷; however, in place of a person who is or would be so entitled to be registered²⁸, the court²⁹ may, on the application of a joint unit-holder, order that a joint unit-holder is entitled to be entered in the register of members of a commonhold association³⁰.

A commonhold association may not be a member of itself³¹.

A person who is entitled to be entered in the register of members of a commonhold association becomes a member when he is registered in accordance with the companies legislation³².

Where a member of a commonhold association ceases to be a unit-holder or joint unit-holder of a commonhold unit in relation to which the association exercises functions he ceases to be a member of the commonhold association³³, but this does not affect any right or liability already acquired or incurred in respect of a matter relating to a time when he was a unit-holder or joint unit-holder³⁴.

A member of a commonhold association may resign by notice in writing to the association if (and only if) he is a member by virtue of the provisions governing either the pre-commonhold period or the transitional period (and not also by virtue of any other provisions)³⁵.

A director need not be a member of the commonhold association³⁶.

1 As to the meaning of 'person' see PARA 301 note 20.

2 As to the meaning of 'commonhold association' see PARA 305.

- 3 Commonhold and Leasehold Reform Act 2002 Sch 3 para 10. The provisions referred to are those contained in Sch 3. The Companies Act 1985 s 22(1) (repealed with effect from 1 October 2009 by the Companies Act 2006 Sch 16, and replaced as from that date by the differently worded Companies Act 2006 s 112(1) (not yet in force)) (initial members: see **COMPANIES** vol 14 (2009) PARA 321) applies to a commonhold association subject to the Commonhold and Leasehold Reform Act 2002 Sch 3: Sch 3 para 15(1). However, the Companies Act 1985 s 22(2) (similarly repealed; replaced as from 1 October 2009 by the Companies Act 2006 s 112(2) (not yet in force)) (see **COMPANIES** vol 14 (2009) PARA 321) and the Companies Act 1985 s 23 (also repealed with effect from 1 October 2009 and replaced by provisions of the Companies Act 2006 ss 136-138, 141-144 (not yet in force)) (membership of holding company: see **COMPANIES** vol 14 (2009) PARA 334) do not apply to a commonhold association: Commonhold and Leasehold Reform Act 2002 Sch 3 para 15(2).
- 4 As to the incorporation of the commonhold association see PARAS 305-308.
- 5 As to the meaning of 'land' see PARA 301 note 2.
- 6 As to the memorandum of association of the commonhold association see PARAS 306-307.
- 7 As to the meaning of 'commonhold land' see PARA 302. The period between these two events is known as the 'pre-commonhold period': Commonhold and Leasehold Reform Act 2002 Sch 3 para 5.
- 8 Commonhold and Leasehold Reform Act 2002 Sch 3 para 5; and see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(a).
- 9 As to the meaning of 'transitional period' see PARA 323.
- 10 Commonhold and Leasehold Reform Act 2002 Sch 3 para 6(1), (2); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(b).
- 11 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'developer' means a person who makes an application under s 2 (see PARA 320): s 58(1).
- 12 Commonhold and Leasehold Reform Act 2002 Sch 3 para 6(3); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(b). As to the requirement that a company must maintain a register of members see note 32; and **COMPANIES** vol 14 (2009) PARA 335 et seq.
- 13 As to the meaning of 'unit-holder' see PARA 331.
- 14 As to the meaning of 'commonhold unit' see PARA 330.
- 15 Commonhold and Leasehold Reform Act 2002 Sch 3 para 7. As to the exercise by a commonhold association of functions in relation to commonhold land see PARA 302 note 8.
- 16 Commonhold and Leasehold Reform Act 2002 Sch 3 para 7(a). As to registration with unit-holders see s 9; and PARA 324. See also the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(c).
- 17 Commonhold and Leasehold Reform Act 2002 Sch 3 para 7(b). As to the meaning of 'transfer' (of a commonhold unit) see PARA 342. See also the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(c).
- 18 As to the meaning of 'joint unit-holder' see PARA 331.
- 19 Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(1). Two or more persons may become joint unit-holders of a commonhold unit: (1) on the unit becoming commonhold land by registration with unit-holders under s 9 (see PARA 324) (Sch 3 para 8(1)(a)); or (2) on the transfer of the unit (Sch 3 para 8(1)(b)).
- 20 Ie for the purpose of the Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(2). If joint unit-holders nominate one of themselves for the purpose, the nominated person is entitled to be entered in the register of members of the commonhold association in place of the person entered by virtue of Sch 3 para 8(2) or Sch 3 para 8(6): Sch 3 para 8(6)(a), (c).
- 21 Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(2); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(d)(i).
- 22 In any enactment, 'writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form: see the Interpretation Act 1978 Sch 1.
- 23 Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(3)(a).

24 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1, 'prescribed' means prescribed by regulations: s 64(1).

25 Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(3)(b). The prescribed period is the period of seven days beginning with the date on which the joint unit-holders are entitled to be registered as proprietors of the freehold estate in the commonhold unit: see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(d)(ii).

26 As to the proprietorship register see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 815.

27 Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(4); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(d)(ii).

28 le by virtue of the Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(4): see the text and notes 26-27.

29 As to the meaning of 'court' see PARA 301 note 17.

30 Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(5); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(d)(iii). If joint unit-holders nominate one of themselves for the purpose, the nominated person is entitled to be entered in the register of members of the commonhold association in place of the person entered by virtue of the Commonhold and Leasehold Reform Act 2002 Sch 3 para 8(5) or Sch 3 para 8(6): Sch 3 para 8(6)(b), (c); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 2(d)(iv).

31 Commonhold and Leasehold Reform Act 2002 Sch 3 para 9.

32 Commonhold and Leasehold Reform Act 2002 Sch 3 para 11. As to the duty to register see the Companies Act 1985 s 352 (repealed by the Companies Act 2006 Sch 16 with effect from 1 October 2009 and replaced as from that date by the Companies Act 2006 s 113 (not yet in force)) (duty to maintain register of members); and **COMPANIES** vol 14 (2009) PARA 335. Regulations may make provision about the performance by a commonhold association of its duty to register under the companies legislation where a person: (1) becomes entitled to be entered in the register of members by virtue of the Commonhold and Leasehold Reform Act 2002 Sch 3 paras 5-8 (see the text and notes 4-30); or (2) ceases to be a member by virtue of Sch 3 para 12 (see the text and notes 33-34) or on resignation: see Sch 3 para 14(1)(a), (b). The regulations may in particular require entries in the register of members to be made within a specified period: Sch 3 para 14(2). A period so specified may be expressed to begin from:

8 (a) the date of a notification under s 15(3) (see PARA 342) (Sch 3 para 14(3)(a));

9 (b) the date on which the directors of the commonhold association first become aware of a specified matter (Sch 3 para 14(3)(b)); or

10 (c) some other time (Sch 3 para 14(3)(c)).

A requirement by virtue of Sch 3 para 14 must be treated as a requirement of the Companies Act 1985 s 352 (repealed with effect from 1 October 2009) for the purposes of s 352(5) (replaced as from 1 October 2009 by the Companies Act 2006 s 113(7), (8)) (fines: see **COMPANIES** vol 14 (2009) PARA 335): Commonhold and Leasehold Reform Act 2002 Sch 3 para 14(4). For the relevant regulations see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 3, 4.

33 Commonhold and Leasehold Reform Act 2002 Sch 3 para 12(a).

34 Commonhold and Leasehold Reform Act 2002 Sch 3 para 12(b).

35 Commonhold and Leasehold Reform Act 2002 Sch 3 para 13. The provisions mentioned in the text in relation to the pre-commonhold period are those of Sch 3 para 5 (see note 7) and in relation to the transitional period are those of Sch 3 para 6 (see the text and notes 9-12).

36 See the Commonhold Regulations 2004, SI 2004/1829, Sch 2 art 39.

UPDATE

310 Membership of a commonhold association

NOTES--SI 2004/1829 Sch 2 substituted: SI 2009/2363.

TEXT AND NOTES 3, 7, 8, 10, 12, 32--Commonhold and Leasehold Reform Act 2002 Sch 3 paras 5, 6, 11, 14 amended, Sch 3 para 15 substituted: SI 2009/1941.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(ii) Commonhold Community Statement/311. Commonhold community statement; in general.

(ii) Commonhold Community Statement

311. Commonhold community statement; in general.

A 'commonhold community statement' is a document which makes provision in relation to specified land¹ for:

- 40 (1) the rights and duties of the commonhold association²; and
- 41 (2) the rights and duties of the unit-holders³.

A commonhold community statement must be in the prescribed form⁴ or a form to the same effect⁵ and regulations must make provision about its content⁶. Such a statement must make provision⁷:

- 42 (a) regulating the use of commonhold units⁸; and
- 43 (b) imposing duties in respect of the insurance, repair and maintenance of each commonhold unit⁹,

and may¹⁰:

- 44 (i) impose a duty¹¹ on the commonhold association¹²;
- 45 (ii) impose a duty on a unit-holder¹³;
- 46 (iii) make provision about the taking of decisions in connection with the management of the commonhold or any other matter concerning it¹⁴.

A duty conferred by a commonhold community statement on a commonhold association or a unit-holder does not require any other formality¹⁵.

Various limitations are placed upon the commonhold community statement. A commonhold community statement may not prevent or restrict the transfer of a commonhold unit¹⁶; it may not provide for the transfer or loss of an interest in land on the occurrence or non-occurrence of a specified event¹⁷; and provision made by a commonhold community statement is of no effect to the extent that¹⁸:

- 47 (A) it is prohibited¹⁹;
- 48 (B) it is inconsistent with any provision made by or by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002²⁰;
- 49 (C) it is inconsistent with anything which is treated as included in the statement²¹;
- or
- 50 (D) it is inconsistent with the memorandum or articles of association of the commonhold association²².

1 Commonhold and Leasehold Reform Act 2002 ss 1(3), 31(1). The land is as specified in the statement itself. As to the meaning of 'land' see PARA 301 note 2. As to the amendment of a commonhold community statement see PARA 313.

2 Commonhold and Leasehold Reform Act 2002 s 31(1)(a); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 1.1.1, 1.1.2. As to the rights and duties of a commonhold association see PARA 305 et seq; and as to the meaning of 'commonhold association' see PARA 305.

3 Commonhold and Leasehold Reform Act 2002 s 31(1)(b); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 1.1.1, 1.1.2. As to the meaning of 'unit-holder', and as to the rights and duties of unit-holders, see PARA 331. In the application of s 31(1)(b) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(c). As to the meaning of 'joint unit-holder' see PARA 331.

4 Commonhold and Leasehold Reform Act 2002 s 31(2). For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). For the prescribed form see the Commonhold Regulations 2004, SI 2004/1829, Sch 3. See further PARA 312.

5 Commonhold Regulations 2004, SI 2004/1829, reg 15(1).

6 Commonhold and Leasehold Reform Act 2002 s 32(1). The regulations may permit, require or prohibit the inclusion in a statement of specified provision, or provision of a specified kind, for a specified purpose or about a specified matter: s 32(2)(a), (b). The regulations may provide for a statement to be treated as including provision prescribed by or determined in accordance with the regulations (s 32(3)(a)) or permit a statement to make provision in place of provision which would otherwise be treated as so included (s 32(3)(b)). The regulations may also:

- 11 (1) make different provision for different descriptions of commonhold association or unit-holder (s 32(4)(a));
- 12 (2) make different provision for different circumstances (s 32(4)(b));
- 13 (3) make provision about the extent to which a commonhold community statement may make different provision for different descriptions of unit-holder or common parts (s 32(4)(c)).

As to the meaning of 'common parts' see PARA 332. In the application of s 32(4)(a), (c) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(d). The matters to which such regulations may relate include, but are not limited to:

- 14 (a) the matters mentioned in s 11 (see PARA 330), s 14 (see the text and notes 7-9), s 15 (see PARA 342), s 20 (see PARA 348), s 21 (see PARA 350), s 25 (see PARA 333), s 26 (see PARA 332), s 27 (see PARA 332), s 38 (see PARA 338), s 39 (see PARA 338) and s 58 (see PARA 317) (s 32(5)(a)); and
- 15 (b) any matter for which regulations under s 37 (see PARA 337) may make provision (s 32(5)(b)).

See further the Commonhold Regulations 2004, SI 2004/1829, Sch 3; and PARA 312.

7 Commonhold and Leasehold Reform Act 2002 s 14(1), (2).

8 Commonhold and Leasehold Reform Act 2002 s 14(1); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.3.1. As to the meaning of 'commonhold unit' see PARA 330.

9 Commonhold and Leasehold Reform Act 2002 s 14(2); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.4-4.5. A duty under the Commonhold and Leasehold Reform Act 2002 s 14(2) may be imposed on the commonhold association or the unit-holder: s 14(3). In the application of s 14(3) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(aa) (added by SI 2004/1829). As to the meaning of 'duty to insure' see PARA 332 note 7; and as to the meaning of 'maintaining' (property) see PARA 332 note 8.

10 Commonhold and Leasehold Reform Act 2002 s 31(3). This provision is subject to any provision made by or by virtue of Pt 1, and any provision of the memorandum or articles of the commonhold association: s 31(4)(a), (b). As to the memorandum and articles of the commonhold association see PARAS 306-309.

11 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 31, 'duty' includes, in particular, a duty:

- 16 (1) to pay money (s 31(5)(a));
- 17 (2) to undertake works (s 31(5)(b));
- 18 (3) to grant access (s 31(5)(c));

- 19 (4) to give notice (s 31(5)(d));
- 20 (5) to refrain from entering into transactions of a specified kind in relation to a commonhold unit (s 31(5)(e));
- 21 (6) to refrain from using the whole or part of a commonhold unit for a specified purpose or for anything other than a specified purpose (s 31(5)(f));
- 22 (7) to refrain from undertaking works (including alterations) of a specified kind (s 31(5)(g));
- 23 (8) to refrain from causing nuisance or annoyance (s 31(5)(h));
- 24 (9) to refrain from specified behaviour (s 31(5)(i));
- 25 (10) to indemnify the commonhold association or a unit-holder in respect of costs arising from the breach of a statutory requirement (s 31(5)(j)).

In the application of s 31(5)(j) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(c). The rights and duties conferred or imposed by the commonhold community statement are in addition to any rights and duties that may exist under the general law: see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.1.3.

Provision in a commonhold community statement imposing a duty to pay money (whether in pursuance of head (1) above or any other provision made by or by virtue of the Commonhold and Leasehold Reform Act 2002 Pt 1) may include provision for the payment of interest in the case of late payment: s 31(6). As to the provision for payments made by unit-holders see PARA 338.

12 Commonhold and Leasehold Reform Act 2002 s 31(3)(a); and see further PARA 312.

13 Commonhold and Leasehold Reform Act 2002 s 31(3)(b); and see further PARA 312. In the application of s 31(3)(b) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(c).

14 Commonhold and Leasehold Reform Act 2002 s 31(3)(c); and see further PARA 312.

15 Commonhold and Leasehold Reform Act 2002 s 31(7). In the application of s 31(7) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(c).

16 See the Commonhold and Leasehold Reform Act 2002 s 15(2); and PARA 342.

17 Commonhold and Leasehold Reform Act 2002 s 31(8).

18 Commonhold and Leasehold Reform Act 2002 s 31(9).

19 Commonhold and Leasehold Reform Act 2002 s 31(9)(a). A provision may be prohibited by virtue of s 32: see note 6.

20 Commonhold and Leasehold Reform Act 2002 s 31(9)(b).

21 Commonhold and Leasehold Reform Act 2002 s 31(9)(c). A provision may be treated as included in the statement by virtue of s 32: see note 6.

22 Commonhold and Leasehold Reform Act 2002 s 31(9)(d). See also the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.1.5.

UPDATE

311 Commonhold community statement; in general

NOTE 10--Reference to memorandum omitted: Commonhold and Leasehold Reform Act 2002 s 31(4) (amended by SI 2009/1941).

TEXT AND NOTE 22--Head (D). Reference to memorandum omitted: Commonhold and Leasehold Reform Act 2002 s 31(9)(d) (amended by SI 2009/1941). SI 2004/1829 Sch 3 para 1.1.5 amended: SI 2009/2363.

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312. Commonhold community statement: prescribed contents.

The commonhold community statement¹ must contain all the provisions contained in the prescribed form² and is treated as including those provisions³. The prescribed provisions relate to:

- 51 (1) the status of the commonhold community statement⁴, the name of the commonhold⁵, the name and company number of the commonhold association⁶, and other introductory matters⁷;
- 52 (2) the extent and location of the properties within the commonhold and the rights that exist over the commonhold land⁸, including:
 - 3 4. (a) a list of the plans incorporated in the commonhold community statement⁹;
 5. (b) a description of the location and extent of the commonhold land¹⁰;
 6. (c) the number of commonhold units¹¹, their location and extent¹², details of the rights existing for the benefit of each commonhold unit over other commonhold units or over the common parts¹³ and details of rights existing for the benefit of the common parts over one or more commonhold units¹⁴;
- 4 53 (3) the commonhold allocations¹⁵, namely:
 - 5 7. (a) the specified percentage allocated to each commonhold unit in respect of the commonhold assessment¹⁶;
 8. (b) the specified percentage allocated to each commonhold unit in respect of any levy to fund the repair and maintenance of the common parts or the commonhold units¹⁷;
 9. (c) the specified number of votes allocated to a member in respect of each commonhold unit¹⁸; and
- 6 54 (4) the rules of the commonhold¹⁹, which are for the benefit of, and bind, all unit-holders and the commonhold association and which, where stated, also bind tenants²⁰, together with the methods of enforcing those rules²¹; the rules are concerned with:
 - 7 10. (a) financial matters²²;
 11. (b) use of the commonhold units and common parts²³;
 12. (c) insurance of the common parts²⁴ and the commonhold units²⁵;
 13. (d) repair and maintenance of the common parts²⁶ and the commonhold units²⁷;
 14. (e) alteration of the common parts²⁸;
 15. (f) dealings with the land²⁹;
 16. (g) amendment of the commonhold community statement³⁰;
 17. (h) notices, registers and documents³¹; and
 18. (i) dispute resolution³².

The commonhold community statement must include the name of the commonhold on the front page and signature page and must include the information relevant to the commonhold in the paragraphs in the annexes³³. It must be signed at the end in the prescribed form³⁴.

Where, in defining the extent of a commonhold unit, the commonhold community statement excludes³⁵ the structure and exterior of a self-contained building, or of a self-contained part of a building, the commonhold community statement is treated as including provision which imposes a duty on the commonhold association to insure the whole of the self-contained building, or self-contained part of the building³⁶.

The commonhold community statement may³⁷ include further definitions and may include further numbered provisions relevant to the commonhold at the end of a part or a section or in an annex³⁸. Provisions, including information contained in the annexes, inserted by the developer³⁹ or the commonhold association that are not prescribed by regulations, are known as 'local rules'⁴⁰. Where further definitions are included in the commonhold community statement each definition must be inserted in alphabetical order into the prescribed definitions⁴¹ in the commonhold community statement⁴².

Where further provisions are included in the commonhold community statement which confer rights on the developer, the provisions must be inserted in an annex headed 'Development Rights', that annex must be numbered and be the last annex in the commonhold community statement and a reference to its heading must be included in the table of contents in the commonhold community statement⁴³. Where any other provisions are included in the commonhold community statement in a part or section:

- 55 (i) each additional provision must be inserted in numerical order continuing the numbers within the relevant part or section;
- 56 (ii) each additional provision must be immediately preceded by a heading which must include 'additional provision specific to this commonhold' in the relevant part or section; and
- 57 (iii) a reference to the heading must be included in the table of contents in the commonhold community statement⁴⁴.

Where any other provisions are included in the commonhold community statement in an annex, a heading which must include 'additional provisions specific to this commonhold' must be inserted at the end of Part 4 of the prescribed form⁴⁵.

1 For these purposes, 'commonhold community statement' means the commonhold community statement of a commonhold: Commonhold Regulations 2004, SI 2004/1829, reg 15(13). As to the commonhold community statement see PARA 311.

2 For the prescribed form see the Commonhold Regulations 2004, SI 2004/1829, Sch 3; the text and notes 4-32; and PARAS 313, 332, 334, 336-339, 341, 342-344, 346, 347.

3 Commonhold Regulations 2004, SI 2004/1829, reg 15(2).

4 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1. The provisions of the commonhold community statement (the 'CCS') are subject to the Commonhold and Leasehold Reform Act 2002 and regulations made under it. In particular, regulations may provide that a CCS is to be treated as including specified provisions or as including provisions of a specified kind, for a specified purpose or about a specified matter: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.1.4.

5 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.2.1. The name of the commonhold is to be set out in Sch 3, Annex 1 para 1.

6 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.2.2. The name and company number of the commonhold association is to be set out in Sch 3, Annex 1 paras 2, 3. In the CCS, 'commonhold association' means the commonhold association named in Sch 3, Annex 1 para 2: see Sch 3 para 1.4.5. As to the commonhold association see PARA 305 et seq.

- 7 As to the structure of the CCS see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.3; and as to the interpretation of the CCS see Sch 3 para 1.4.
- 8 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.1.1.
- 9 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.2.1. The relevant list is to be set out in Sch 3, Annex 2 para 1.
- 10 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.3.1. The relevant description is to be set out in Sch 3, Annex 2 para 2.
- 11 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.4.1. The relevant number is to be set out in Sch 3, Annex 2 para 3. 'Commonhold unit' means a unit as defined in Sch 3, Annex 2 paras 4, 5 (see note 12): Sch 3 para 1.4.5; and see PARA 330.
- 12 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.4.2. The relevant definition is to be set out in Sch 3, Annex 2 paras 4, 5.
- 13 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.4.3. The relevant details are to be set out in Sch 3, Annex 2 para 6. 'Common parts' means every part of the commonhold which is not for the time being a commonhold unit in accordance with the CCS: Sch 3 para 1.4.5; and see PARA 332.
- 14 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.4.4. The relevant details are to be set out in Sch 3, Annex 2 para 7.
- 15 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 Pt 3 (paras 3.1-3.4). 'Commonhold assessment' means the income required to be raised from unit-holders to meet the expenses of the commonhold association: Sch 3 para 1.4.5. See further PARA 338.
- 16 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 3.2.1. The relevant percentage is to be set out in Sch 3, Annex 3 para 1.
- 17 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 3.3.1. The relevant percentage is to be set out in Sch 3, Annex 3 para 2. Such a levy is referred to as a 'reserve fund levy'. As to the meaning of 'reserve fund' see PARA 313 note 23. The commonhold community statement must include information relevant to the commonhold in Sch 3, Annex 3 para 2 if the directors of the commonhold association have established funds to finance the repair and maintenance of the common parts or commonhold units: reg 15(5)(a).
- 18 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 3.4.1. The relevant number is to be set out in Sch 3, Annex 3 para 3.
- 19 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 Pt 4 (paras 4.1-4.11); and PARAS 337, 341.
- 20 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.1.2. As to the granting of leases see PARA 344.
- 21 As to enforcement of the rules see PARA 337.
- 22 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2; and PARA 338 note 5.
- 23 A unit-holder or tenant must not use a commonhold unit other than in accordance with its permitted use as specified in the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 4 para 2 (local rules); and a unit-holder or tenant must not use the common parts other than in accordance with their permitted use as specified in Sch 3, Annex 4 paras 3, 4 (local rules), or other than in accordance with the rights specified in Sch 3, Annex 2 para 6: see Sch 3 paras 4.3.1, 4.3.2. As to limited use areas see PARA 333.
- 24 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.4; and PARA 332.
- 25 The duties imposed by the CCS in respect of the insurance of the commonhold units are specified in the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 4 para 6 (local rules): see Sch 3 para 4.4.6.
- 26 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.5.1; and PARA 332.
- 27 The duties imposed by the CCS in respect of the repair and maintenance of the commonhold units are specified in the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 4 para 7 (local rules): see Sch 3 para 4.5.2.

- 28 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.6.1; and PARA 334.
- 29 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7; and PARA 342 et seq.
- 30 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8; and PARA 313.
- 31 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.9, 4.10.
- 32 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.11; and PARA 337.
- 33 Commonhold Regulations 2004, SI 2004/1829, reg 15(3).
- 34 Commonhold Regulations 2004, SI 2004/1829, reg 15(4).
- 35 Ie by virtue of the Commonhold Regulations 2004, SI 2004/1829, reg 9(1)(b): see PARA 330.
- 36 Commonhold Regulations 2004, SI 2004/1829, reg 15(7).
- 37 Ie subject to the Commonhold Regulations 2004, SI 2004/1829, reg 15(9)-(12): see the text and notes 41-45.
- 38 Commonhold Regulations 2004, SI 2004/1829, reg 15(8).
- 39 As to the meaning of 'developer' see PARA 310 note 11.
- 40 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5.
- 41 Ie into the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5 (definitions).
- 42 Commonhold Regulations 2004, SI 2004/1829, reg 15(9).
- 43 Commonhold Regulations 2004, SI 2004/1829, reg 15(10)(a); and see further reg 15(10)(b), (c).
- 44 Commonhold Regulations 2004, SI 2004/1829, reg 15(11).
- 45 Commonhold Regulations 2004, SI 2004/1829, reg 15(12)(a); and see further reg 15(12)(b), (c).

UPDATE

312 Commonhold community statement: prescribed contents

NOTE 31--SI 2004/1829 Sch 3 para 4.10 amended: SI 2009/2363.

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313. Amendment of the commonhold community statement.

A commonhold community statement¹ must make provision about how it can be amended².

A paragraph in Parts 1 to 4 of the commonhold community statement (the 'CCS')³ cannot be amended unless it is a local rule⁴. Except where the CCS provides otherwise and subject to the companies legislation⁵, local rules cannot be amended unless the proposed amendment is approved by ordinary resolution⁶. The directors of the commonhold association may, however, amend the CCS without any resolution of the members:

- 58 (1) to include specified provisions, or provisions of a specified kind, for a specified purpose or about a specified matter required by the Commonhold and Leasehold Reform Act 2002 and regulations made under that Act from time to time and for the time being in force⁷; or
- 59 (2) to delete any provisions that are of no effect for the following reasons⁸, namely that they are:
- 9
- 19. (a) inconsistent with any provision made by or by virtue of the 2002 Act;
- 20. (b) inconsistent with anything which is treated as included in the CCS by regulations;
- 21. (c) inconsistent with the memorandum or articles of association; or
- 22. (d) prohibited by regulations⁹; or
- 10
- 60 (3) where further provisions are included in the commonhold community statement which confer rights on the developer, to remove any surrendered development rights¹⁰.

The prescribed format for certain matters contained in the annexes to the CCS¹¹ cannot be amended¹². Certain amendments¹³ cannot be made unless the unit-holder¹⁴ and the registered proprietor of any charge over the commonhold unit or, as the case may be, the land in question have consented in writing to the proposed amendment before it is made¹⁵; and the CCS cannot be amended to record a change in the boundaries of the commonhold, a commonhold unit or the common parts¹⁶ following a transfer unless any required consent¹⁷ has been given and the approval of the members by special resolution¹⁸ has been given¹⁹.

An amendment to the permitted use of a commonhold unit²⁰ cannot be made unless the proposed amendment is approved by special resolution and the unit-holder has consented in writing to the proposed amendment before it is made²¹.

An amendment to:

- 61 (i) the percentage of the commonhold assessment²² or levy²³ allocated²⁴ to a commonhold unit; and
- 62 (ii) the number of votes allocated to a member²⁵,

cannot be made unless the proposed amendment is approved by special resolution²⁶. A unit-holder has the right not to have the percentage of the commonhold assessment or levy allocated to his, or any other, commonhold unit altered if the effect of the alteration, taking into

account all the circumstances of the case, would be to allocate a significantly disproportionate percentage of the commonhold assessment or levy to his commonhold unit²⁷; and a unit-holder who is a member has the right not to have the number of votes allocated to him, or any other member, in respect of a commonhold unit altered if the effect of the alteration, taking into account all the circumstances of the case, would be to allocate a significantly disproportionate number of votes to him²⁸.

An amendment of a commonhold community statement has no effect unless and until the amended statement is registered²⁹.

1 As to the meaning of 'commonhold community statement' see PARA 311.

2 Regulations made under the Commonhold and Leasehold Reform Act 2002 s 32 (see PARA 311) must require a commonhold community statement to make provision about how it can be amended: s 33(1). The regulations must, in particular, make provision under s 32(3)(a) (whether or not subject to provision under s 32(3)(b)) (see PARA 311 note 6): s 33(2).

3 I.e. a paragraph in the Commonhold Regulations 2004, SI 2004/1829, Sch 3 Pts 1-4 (paras 1.1-4.11): see PARAS 312, 332, 334, 336-339, 341, 342-344, 346, 347.

4 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.2. As to local rules see PARA 312 text and notes 39-40.

5 I.e. subject to the Companies Act 1985 or, as from 1 October 2009, to the Companies Act 2006.

6 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.3. 'Ordinary resolution' means a resolution passed by a simple majority of such members as (being entitled to do so) vote in person or, if proxies are allowed, by proxy, at a general meeting of the commonhold association of which notice specifying the intention to propose the resolution as an ordinary resolution has been given in accordance with the articles of association: Sch 3 para 1.4.5. 'Member' means a person whose name is entered as a member in the register of members of the commonhold association, but excludes any person who has ceased to be a unit-holder or joint unit-holder, or any person who has resigned as a member: Sch 3 para 1.4.5. 'General meeting' means a meeting of the members of the commonhold association held in accordance with the articles of association of the commonhold association; and 'articles of association' means the articles of association of the commonhold association: Sch 3 para 1.4.5. As to the articles of association see PARAS 306, 308; and as to the meaning of 'commonhold association' see PARAS 305, 312 note 6.

7 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 1.4.5, 4.8.14.

8 I.e. for the reasons set out in the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.1.5: see PARA 311.

9 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.14.

10 See the Commonhold Regulations 2004, SI 2004/1829, reg 15(10)(c), modifying Sch 3 para 4.8.14. As to the meaning of 'developer' see PARA 310 note 11.

11 I.e. the format for the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 1 paras 1-3, Annex 2 paras 1-7, Annex 3 paras 1-3 and Annex 4 paras 1-7. As to those matters see PARA 312.

12 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.4.

13 I.e. an amendment:

- 26 (1) to the rights for, or over, a commonhold unit specified in the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 2 para 6 or Annex 2 para 7 (see PARA 312) (Sch 3 para 4.8.5);
- 27 (2) to remove a reference to a unit-holder in the column headed 'Authorised users' in Sch 3, Annex 4 para 4 (see PARA 312) (Sch 3 para 4.8.6);
- 28 (3) which redefines the extent of a commonhold unit (Sch 3 para 4.8.8);
- 29 (4) which specifies that land which forms part of a commonhold unit is to be added to the common parts (Sch 3 para 4.8.9).

As to the meaning of 'common parts' see PARA 312 note 13; and as to the meaning of 'commonhold unit' see PARA 312 note 11. See also note 14.

14 'Unit-holder' means a person entitled to be registered at Land Registry as the proprietor of the freehold estate in a commonhold unit (whether or not he is registered): Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5. In the application of the provisions in Sch 3 paras 4.8.5-4.8.9 (see notes 13, 21) to a commonhold unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: reg 2(1)(b), Sch 3 para 4.8.1. In the application of all other provisions of Sch 3 to a commonhold unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: reg 2(2)(c). As to unit-holders and joint unit-holders see further PARA 331.

15 See note 13.

16 As to the meaning of 'common parts' see PARA 312 note 13. See also PARA 332.

17 Ie any consent required under the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.8.8, 4.8.9.

18 'Special resolution' means a resolution passed by a majority of not less than 75% of such members as (being entitled to do so) vote in person or, if proxies are allowed, by proxy, at a general meeting of the commonhold association of which notice specifying the intention to propose the resolution as a special resolution has been given in accordance with the articles of association: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5.

19 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.10.

20 Ie the permitted use specified in the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 4 para 2: see PARA 312.

21 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.7; and see note 14.

22 As to the meaning of 'commonhold assessment' see PARA 312 note 15.

23 'Levy' means an amount set by the directors of the commonhold association from time to time to be raised from unit-holders for contribution to a reserve fund; and 'reserve fund' means a fund set up by the directors of the commonhold association to which unit-holders contribute to finance the repair and maintenance of the common parts or commonhold units: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5. See further PARA 338.

24 Ie allocated in the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 3 paras 1, 2: see PARA 312.

25 Ie allocated in the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 3 para 3: see PARA 312.

26 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.11.

27 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.12.

28 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.13.

29 See the Commonhold and Leasehold Reform Act 2002 s 33(3); the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.8.16; and PARA 326.

UPDATE

313 Amendment of the commonhold community statement

NOTE 6--SI 2004/1829 Sch 3 para 4.8.3 amended: SI 2009/2363.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2.
 ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(iii) Consent to
 Registration/314. Consent to registration of commonhold land: requirement for consent.

(iii) Consent to Registration

314. Consent to registration of commonhold land: requirement for consent.

An application for the registration of commonhold land¹ may not be made in respect of a freehold estate in land² without the consent³ of anyone who:

- 63 (1) is the registered⁴ proprietor⁵ of the freehold estate in the whole or part of the land⁶;
- 64 (2) is the registered proprietor of a leasehold estate⁷ in the whole or part of the land granted for a term of more than 21 years⁸;
- 65 (3) is the registered proprietor of a charge⁹ over the whole or part of the land¹⁰;
or
- 66 (4) falls within any other class of person which may be prescribed¹¹.

Regulations must make provision about consent for these purposes¹². The Commonhold Regulations 2004¹³ provide that an application for the registration of commonhold land¹⁴ may not be made in respect of a freehold estate in land without the consent of anyone who is:

- 67 (a) the estate owner of any unregistered freehold estate in the whole or part of the land;
- 68 (b) the estate owner of any unregistered leasehold estate in the whole or part of the land granted for a term of more than 21 years;
- 69 (c) the owner of any mortgage, charge or lien for securing money or money's worth over the whole or part of any unregistered land included in the application;
or
- 70 (d) subject to heads (i) and (ii) below, the holder of a lease granted for a term of not more than 21 years which will be extinguished by virtue of specified provisions¹⁵ of the Commonhold and Leasehold Reform Act 2002¹⁶.

An application for registration may, however, be made without the consent of a person who would otherwise be required to consent by virtue of head (d) above if:

- 71 (i) the person is entitled to the grant of a term of years absolute which meets prescribed conditions¹⁷; and
- 72 (ii) before the application for registration is made, the person's entitlement to the grant of a term of years absolute has been protected by a notice in the land register to the freehold title or titles for the land in the application or, in the case of unregistered land, by an entry in the land charges register in the name of the estate owner of the freehold title¹⁸.

1 Ie an application made under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320. As to the meaning of 'commonhold land' see PARA 302.

2 As to the meaning of 'land' see PARA 301 note 2. As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

- 3 Commonhold and Leasehold Reform Act 2002 s 3(1).
 - 4 As to the meaning of 'registered' see PARA 309 note 10.
 - 5 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.
 - 6 Commonhold and Leasehold Reform Act 2002 s 3(1)(a).
 - 7 As to the leasehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 100 et seq.
 - 8 Commonhold and Leasehold Reform Act 2002 s 3(1)(b). Leases falling outside the class which require the registered proprietor to give consent may be extinguished: see PARAS 322, 324.
 - 9 As to the proprietor of a charge see **LAND REGISTRATION; MORTGAGE**.
 - 10 Commonhold and Leasehold Reform Act 2002 s 3(1)(c). Charges may not be made over the common parts or over part units: see PARAS 332, 348. As to the meaning of 'common parts' see PARA 332; and as to making charges over part units see further PARA 351.
 - 11 Commonhold and Leasehold Reform Act 2002 s 3(1)(d). As to the meaning of 'person' see PARA 301 note 20. For the purposes of Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1).
 - 12 Commonhold and Leasehold Reform Act 2002 s 3(2). In particular, the regulations may make provision:
 - 30 (1) prescribing the form of consent (s 3(2)(a); and see PARA 315);
 - 31 (2) about the effect and duration of consent (including provision for consent to bind successors) (s 3(2)(b); and see PARA 315);
 - 32 (3) about withdrawal of consent (including provision preventing withdrawal in specified circumstances) (s 3(2)(c); and see PARA 315);
 - 33 (4) for consent given for the purpose of one application under s 2 (see PARA 320) to have effect for the purpose of another application (s 3(2)(d); and see PARA 315);
 - 34 (5) for consent to be deemed to have been given in specified circumstances (s 3(2)(e); and see PARA 315);
 - 35 (6) enabling a court to dispense with a requirement for consent in specified circumstances (s 3(2)(f); and see PARA 316).
- As to the meaning of 'court' see PARA 301 note 17.
- 13 Ie the Commonhold Regulations 2004, SI 2004/1829.
 - 14 See note 1.
 - 15 Ie by virtue of the Commonhold and Leasehold Reform Act 2002 s 7(3)(d) (see PARA 322) or s 9(3)(f) (see PARA 324).
 - 16 Commonhold Regulations 2004, SI 2004/1829, reg 3(1).
 - 17 The consent of a person who would otherwise be required to consent by virtue of head (d) in the text is not required if the person is entitled to the grant of a term of years absolute: (1) of the same premises as are comprised in the extinguished lease; (2) on the same terms as the extinguished lease, except to the extent necessary to comply with the Commonhold and Leasehold Reform Act 2002 and the Commonhold Regulations 2004, SI 2004/1829, and excluding any terms that are spent; (3) at the same rent as the rent payable under, and including the same provisions for rent review as were included in, the extinguished lease as at the date on which it will be extinguished; (4) for a term equivalent to the unexpired term of the lease which will be extinguished; and (5) to take effect immediately after the lease is extinguished by virtue of the Commonhold and Leasehold Reform Act 2002 s 7(3)(d) or s 9(3)(f): Commonhold Regulations 2004, SI 2004/1829, reg 3(2)(a).
 - 18 Commonhold Regulations 2004, SI 2004/1829, reg 3(2).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(iii) Consent to Registration/315. Consent to registration of commonhold land: details of consent.

315. Consent to registration of commonhold land: details of consent.

Consent to an application for the registration of commonhold land¹ must be given in the prescribed form². Consent is binding on a person who gives consent or who is deemed to have given consent³; but it may be given subject to conditions⁴. Subject to any condition imposing a shorter period, consent will lapse if no application is made within a period of 12 months beginning with the date on which consent was given⁵. Consent may be withdrawn at any time before the date on which any application is submitted to the registrar⁶.

Consent is deemed to have been given by:

- 73 (1) the person making the application where that person's consent would otherwise be required⁷, but has not been expressly given; and
- 74 (2) a successor in title to a person who has given consent or who is deemed to have given consent⁸.

Consent given for the purpose of one application has effect for the purpose of another application ('the new application') only where the new application is submitted:

- 75 (a) in place of a previous application which has been withdrawn by the applicant, or rejected or cancelled by the registrar; and
- 76 (b) within a period of 12 months beginning with the date on which the consent was given⁹.

Where a required consent¹⁰ has been lodged relating to an interest which is unregistered or is the subject of only a notice, caution or restriction in the register, the applicant must also lodge sufficient evidence to satisfy the registrar that the person whose consent has been lodged is the person who was entitled to that interest at the time the consent was given¹¹. For these purposes, the registrar may accept as sufficient evidence of entitlement a conveyancer's certificate that he is satisfied that the person whose consent has been lodged in relation to that interest is the person who was entitled to it at the time the consent was given and that he holds evidence of this¹².

1 For these purposes, 'consent' means consent for the purposes of the Commonhold and Leasehold Reform Act 2002 s 3 (see PARA 314) (ie consent to an application made under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320): Commonhold Regulations 2004, SI 2004/1829, reg 4(8). As to the meaning of 'commonhold land' see PARA 302.

2 Commonhold Regulations 2004, SI 2004/1829, reg 4(1)(a). For the prescribed form of consent to an application under the Commonhold and Leasehold Reform Act 2002 s 2 see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 7, Sch 1, Form CON 1.

3 Commonhold Regulations 2004, SI 2004/1829, reg 4(2), which is subject to reg 4(3), (4), (7): see reg 4(2).

4 Commonhold Regulations 2004, SI 2004/1829, reg 4(3).

5 Commonhold Regulations 2004, SI 2004/1829, reg 4(4).

6 Commonhold Regulations 2004, SI 2004/1829, reg 4(7). As to the meaning of 'the registrar' see PARA 309 note 13.

- 7 le in accordance with the Commonhold and Leasehold Reform Act 2002 s 3: see PARA 314.
- 8 Commonhold Regulations 2004, SI 2004/1829, reg 4(5).
- 9 Commonhold Regulations 2004, SI 2004/1829, reg 4(6).
- 10 le a consent required under or by virtue of the Commonhold and Leasehold Reform Act 2002 s 3.
- 11 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 9(1).
- 12 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 9(2).

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316. Consent to registration of commonhold land: dispensing with requirement for consent.

The court¹ may dispense with the requirement for consent to an application for the registration of commonhold land² if a person whose consent is required³:

- 77 (1) cannot be identified after all reasonable efforts have been made to ascertain his identity;
- 78 (2) has been identified but cannot be traced after all reasonable efforts have been made to trace him; or
- 79 (3) has been sent the request for consent and all reasonable efforts have been made to obtain a response but he has not responded⁴.

An order under these provisions dispensing with a requirement for consent may be absolute or conditional, and may make such other provision as the court thinks appropriate⁵.

1 As to the meaning of 'court' see PARA 301 note 17.

2 Ie an application made under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320. As to the meaning of 'commonhold land' see PARA 302.

3 As to the persons whose consent is required see PARA 314.

4 Commonhold Regulations 2004, SI 2004/1829, reg 5.

5 Commonhold and Leasehold Reform Act 2002 s 3(3).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(iv) Development Rights/317. Rights permitting or facilitating development business in relation to commonhold land.

(iv) Development Rights

317. Rights permitting or facilitating development business in relation to commonhold land.

A commonhold community statement¹ may confer rights on the developer² which are designed either to permit him to undertake development business³, or to facilitate his undertaking of development business⁴. In reliance upon this⁵, a commonhold community statement may include provision⁶:

- 80 (1) requiring the commonhold association or a unit-holder⁷ to co-operate with the developer for a specified purpose connected with development business⁸;
- 81 (2) making the exercise of a right conferred on the developer⁹ subject to terms and conditions specified in or to be determined in accordance with the commonhold community statement¹⁰;
- 82 (3) making provision about the effect of breach of a requirement by virtue of head (1) above or a term or condition imposed by virtue of head (2) above¹¹;
- 83 (4) disapplying certain provisions relating to an application to add land to the commonhold land¹².

Where a right is conferred on a developer¹³, and if he sends to the registrar¹⁴ a notice surrendering the right¹⁵, then:

- 84 (a) the registrar must arrange for the notice to be kept in his custody and referred to in the register¹⁶;
- 85 (b) the right ceases to be exercisable from the time when the notice is so registered¹⁷; and
- 86 (c) the registrar must inform the commonhold association as soon as is reasonably practicable¹⁸.

If during a transitional period¹⁹ the developer transfers to another person the freehold estate²⁰ in the whole of the commonhold²¹, the successor in title is treated as the developer in relation to any matter arising after the transfer²². If during a transitional period the developer transfers to another person the freehold estate in part of the commonhold, the successor in title is treated as the developer for the purpose of any matter²³ which arises after the transfer²⁴ and affects the estate transferred²⁵.

If after a transitional period or in a case where there is no transitional period²⁶:

- 87 (i) the developer transfers to another person the freehold estate in the whole or part of the commonhold (other than by the transfer of the freehold estate in a single commonhold unit)²⁷; and
- 88 (ii) the transfer is expressed to be inclusive of development rights²⁸,

the successor in title is treated as the developer for the purpose of any matter which arises after the transfer and affects the estate transferred²⁹.

Other than during a transitional period, a person is not treated as the developer in relation to commonhold land for any purpose unless he³⁰:

- 89 (A) is, or has been at a particular time, the registered proprietor³¹ of the freehold estate in more than one of the commonhold units³²; and
- 90 (B) is the registered proprietor of the freehold estate in at least one of the commonhold units³³.

1 As to the meaning of 'commonhold community statement' see PARA 311.

2 As to the meaning of 'developer' see PARA 310 note 11.

3 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'development business' has the meaning given by Sch 4: s 58(1). For the purposes of s 58, the following matters are development business:

- 36 (1) the completion or execution of works on:
 - 5. (a) a commonhold (Sch 4 paras 1, 2(a));
5
 - 6. (b) land which is or may be added to a commonhold (Sch 4 para 2(b)); or
6
 - 7. (c) land which has been removed from a commonhold (Sch 4 para 2(c));
7
- 37 (2) transactions in commonhold units (see PARA 342 et seq) (Sch 4 para 3(1)), and advertising and other activities designed to promote transactions in commonhold units (Sch 4 para 3(2));
- 38 (3) the addition of land to a commonhold (see PARA 334) (Sch 4 para 4);
- 39 (4) the removal of land from a commonhold (Sch 4 para 5);
- 40 (5) amendment of a commonhold community statement (including amendment to redefine the extent of a commonhold unit) (see PARA 313) (Sch 4 para 6);
- 41 (6) appointment and removal of directors of a commonhold association (Sch 4 para 7).

As to the meaning of 'a commonhold' see PARA 302 note 8; as to the meaning of 'land' see PARA 301 note 2; and as to the meaning of 'commonhold unit' see PARA 330. As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq. As to the meaning of 'commonhold association' see PARA 305.

4 Commonhold and Leasehold Reform Act 2002 s 58(2). Section 58(2) is subject to regulations under s 32 (see PARA 311) and, in the case of development business of the kind referred to in Sch 4 para 7 (see note 3 head (6)), to the memorandum and articles of association of the commonhold association: s 58(4). Regulations may make provision regulating or restricting the exercise of rights conferred by virtue of s 58(2): s 58(5).

As to the insertion in the commonhold community statement of further provisions which confer rights on the developer see the Commonhold Regulations 2004, SI 2004/1829, reg 15(10); and PARA 312 text and note 43.

5 Ie in reliance upon the Commonhold and Leasehold Reform Act 2002 s 58(2): see the text and notes 1-4.

6 Commonhold and Leasehold Reform Act 2002 s 58(3).

7 As to the meaning of 'unit-holder' see PARA 331.

8 Commonhold and Leasehold Reform Act 2002 s 58(3)(a). In the application of s 58(3)(a) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(h). As to the meaning 'joint unit-holder' see PARA 331.

9 Ie a right conferred on the developer by virtue of the Commonhold and Leasehold Reform Act 2002 s 58(2): see the text and notes 1-4.

10 Commonhold and Leasehold Reform Act 2002 s 58(3)(b).

- 11 Commonhold and Leasehold Reform Act 2002 s 58(3)(c).
- 12 Commonhold and Leasehold Reform Act 2002 s 58(3)(d). The provisions referred to in the text are those of s 41(2), (3) (see PARA 325): s 58(3)(d). As to the meaning of 'commonhold land' see PARA 302.
- 13 le by virtue of the Commonhold and Leasehold Reform Act 2002 s 58(2): see the text and notes 1-4.
- 14 As to the meaning of 'the registrar' see PARA 309 note 13.
- 15 Commonhold and Leasehold Reform Act 2002 s 58(6). An application to note the surrender of a right conferred by s 58(2) in the register must be accompanied by a notice in the prescribed form: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 24(2). For the prescribed form see Sch 1, Form SR1; and for the prescribed fee for such an application see the Land Registration Fee Order 2009, SI 2009/845, Sch 3 Pt 1 para (22). When satisfied as to the application, the registrar must complete it by entering the notice surrendering the right in the property register of the registered title to the common parts: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 24(2).
- 16 Commonhold and Leasehold Reform Act 2002 s 58(6)(a). As to the meaning of 'the register' see PARA 309 note 10.
- 17 Commonhold and Leasehold Reform Act 2002 s 58(6)(b). As to the meaning of 'registered' see PARA 309 note 10.
- 18 Commonhold and Leasehold Reform Act 2002 s 58(6)(c).
- 19 As to the meaning of 'transitional period' see PARA 323.
- 20 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.
- 21 As to the meaning of 'a commonhold' see PARA 302 note 8.
- 22 Commonhold and Leasehold Reform Act 2002 s 59(1).
- 23 Commonhold and Leasehold Reform Act 2002 s 59(2).
- 24 Commonhold and Leasehold Reform Act 2002 s 59(2)(a).
- 25 Commonhold and Leasehold Reform Act 2002 s 59(2)(b).
- 26 Commonhold and Leasehold Reform Act 2002 s 59(3).
- 27 Commonhold and Leasehold Reform Act 2002 s 59(3)(a).
- 28 Commonhold and Leasehold Reform Act 2002 s 59(3)(b).
- 29 Commonhold and Leasehold Reform Act 2002 s 59(3).
- 30 Commonhold and Leasehold Reform Act 2002 s 59(4).
- 31 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.
- 32 Commonhold and Leasehold Reform Act 2002 s 59(4)(a).
- 33 Commonhold and Leasehold Reform Act 2002 s 59(4)(b).

UPDATE

317 Rights permitting or facilitating development business in relation to commonhold land

NOTE 4--Commonhold and Leasehold Reform Act 2002 s 58(4) amended: SI 2009/1941.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(1) PREPARING THE DOCUMENTATION/(iv) Development Rights/318. Restriction and regulation of development rights in relation to commonhold land.

318. Restriction and regulation of development rights in relation to commonhold land.

The rights (if any) conferred on the developer¹ in a commonhold community statement² are restricted or regulated in accordance with the following provisions³:

- 91 (1) the developer must not exercise development rights in such manner as to interfere unreasonably with:
 - 11
 - 23. (a) the enjoyment by each unit-holder⁴ of the freehold estate in his unit; and
 - 24. (b) the exercise by any unit-holder⁵ or tenant⁶ of his rights under the commonhold community statement⁷;
 - 12
 - 92 (2) the developer may not remove land⁸ from the commonhold⁹ that has been transferred to a unit-holder¹⁰ unless the unit-holder consents in writing before the land is removed¹¹;
 - 93 (3) any damage to the common parts¹² or a commonhold unit caused by the developer in the course of undertaking development business¹³ must be put right by the developer as soon as reasonably practicable taking into account the future works required to complete the development and the degree of interference caused by the damage¹⁴;
 - 94 (4) the developer must not exercise development rights if the works for which the development rights were conferred have been completed; but any rights permitting or facilitating the undertaking of development business of the following type, namely transactions in commonhold units and advertising and other activities designed to promote transactions in commonhold units¹⁵, may be exercised for such further period as the developer continues to undertake that type of development business in relation to the whole or, as the case may be, the relevant part, of the commonhold¹⁶.

1 For these purposes, 'developer' includes a person acting on his authority: Commonhold Regulations 2004, SI 2004/1829, reg 18(6). As to the meaning of 'developer' generally see PARA 310 note 11.

2 As to the meaning of 'commonhold community statement' see para 311; and as to conferring rights on the developer in the commonhold community statement see para 317.

3 Commonhold Regulations 2004, SI 2004/1829, reg 18(1).

4 In the application of head (1)(a) in the text to a commonhold unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: Commonhold Regulations 2004, SI 2004/1829, reg 2(1)(a). As to the meaning of 'unit-holder', and as to joint unit-holders, see para 331.

5 In the application of head (1)(b) in the text to a commonhold unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: Commonhold Regulations 2004, SI 2004/1829, reg 2(2)(a).

6 As to the granting of leases see para 344.

7 Commonhold Regulations 2004, SI 2004/1829, reg 18(2).

8 As to the meaning of 'land' see para 301 note 2.

9 As to the meaning of 'commonhold' see para 302.

10 In the application of head (2) in the text to a commonhold unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: Commonhold Regulations 2004, SI 2004/1829, reg 2(1)(a).

11 Commonhold Regulations 2004, SI 2004/1829, reg 18(3).

12 As to the common parts see para 332.

13 As to the meaning of 'development business' see para 317 note 3.

14 Commonhold Regulations 2004, SI 2004/1829, reg 18(4).

15 I.e. development business of the type referred to in the Commonhold and Leasehold Reform Act 2002 Sch 4 para 3: see para 317 note 3.

16 Commonhold Regulations 2004, SI 2004/1829, reg 18(5).

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 ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/319.
 Application of land registration rules to commonhold land.

(2) REGISTRATION

(i) Procedure for Registration

319. Application of land registration rules to commonhold land.

Subject to certain exceptions¹, land registration rules within the meaning of the Land Registration Act 2002² have effect in relation to anything done by virtue of, or for the purposes of, Part 1 of the Commonhold and Leasehold Reform Act 2002³ as they have effect in relation to anything done by virtue of, or for the purposes of, the Land Registration Act 2002⁴. The Land Registration Rules 2003⁵ ('the main rules')⁶ are set out in detail elsewhere in this work⁷.

Additionally, the Commonhold (Land Registration) Rules 2004⁸ provide for applications to the Chief Land Registrar under Part 1 of the Commonhold and Leasehold Reform Act 2002⁹, the form of the documentation which must accompany any application and the circumstances in which an application may be cancelled by the registrar¹⁰. They also make provision with regard to:

- 95 (1) applications for official copies of the individual register and title plan of the common parts¹¹ in relation to a commonhold¹²; and
- 96 (2) searches of the index map¹³ requiring the title numbers of the units¹⁴ in relation to a commonhold¹⁵.

Those rules are set out in this title¹⁶.

1 See the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 3(2), (3); and notes 4, 9.

2 As to the meaning of 'land registration rules' see the Land Registration Act 2002 s 132(1); and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1125.

3 ie the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70): see PARA 301 et seq, PARA 320 et seq.

4 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 3(1). In their application to the Commonhold and Leasehold Reform Act 2002 Pt 1:

42 (1) subject to the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 3(2) (see note 9), the Land Registration Rules 2003, SI 2003/1417, r 3 (individual registers and more than one registered estate, division and amalgamation: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 812) applies as if the words 'and are vested in the same proprietor' in r 3(1) and the words 'and are vested in the same proprietor' in r 3(4) were omitted (Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 3(3)(a));

43 (2) the Land Registration Rules 2003, SI 2003/1417, r 54 (outline applications: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 930) applies as if r 54(6) referred to the forms in the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1 (r 3(3)(b));

44 (3) the Land Registration Rules 2003, SI 2003/1417, rr 136-138 (exempt information documents; see **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 1100-1102) apply as if a commonhold community statement and a memorandum and articles of association of a commonhold association were excluded from the definition of a 'relevant document' in r 136(7) (Land Registration) Rules 2004, SI 2004/1830, r 3(3)(c));

- 45 (4) for the purposes of the Land Registration Rules 2003, SI 2003/1417, r 208 (Welsh language forms: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1089) the forms in the Land Registration) Rules 2004, SI 2004/1830, Sch 1 are to be treated as if they were scheduled forms within the meaning of the Land Registration Rules 2003, SI 2003/1417 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1087) (Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 3(3)(d));
 - 46 (5) the Land Registration Rules 2003, SI 2003/1417, rr 210, 211 (documents in a Schedule 1 form and electronically produced forms: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 1091-1092) apply to the forms in the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1 as they apply to the forms in the Land Registration Rules 2003, SI 2003/1417, Sch 1 (Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 3(3)(e)); and
 - 47 (6) the Land Registration Rules 2003, SI 2003/1417, Sch 6 Pts 3, 4 (information to be included in the results of certain official searches: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 1115, 1121) apply as if the words 'relevant pending application' included any application made under the Commonhold and Leasehold Reform Act 2002 Pt 1 (Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 3(3)(f)).
- 5 le the Land Registration Rules 2003, SI 2003/1417.
- 6 See the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 2(1).
- 7 See generally **LAND REGISTRATION**.
- 8 le the Commonhold (Land Registration) Rules 2004, SI 2004/1830, which came into force on 27 September 2004: see r 1.
- 9 The Land Registration Rules 2003, SI 2003/1417, r 3(3)(a), (4)(a) (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 812), rr 126, 127 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 978) and r 214 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1083) do not apply to any application made under the Commonhold and Leasehold Reform Act 2002 Pt 1: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 3(2).
- 10 See PARAS 306, 314 et seq, 332, 334, 313, 356, 359-360, 344, 350, 352.
- 11 As to the meaning of 'common parts' see PARA 332.
- 12 See the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 25 (amended by SI 2008/1920).
- 13 As to searches of the index map see generally **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1111.
- 14 As to the meaning of 'commonhold unit' see PARA 330.
- 15 See the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 26. As to the meaning of 'a commonhold' see PARA 302 note 8.
- 16 See note 10.

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 ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/320.
 Application for the registration of commonhold land.

320. Application for the registration of commonhold land.

The registrar¹ must register a freehold estate in land² as a freehold estate in commonhold land³ if the registered freeholder of the land⁴ makes an application⁵, and no part of the land is already commonhold land⁶.

The Lord Chancellor may make rules⁷ about the procedure to be followed on or in respect of commonhold registration documents⁸, and the registration of freehold estates in commonhold land⁹. The rules may, in particular, make provision:

- 97 (1) about the form and content of a commonhold registration document¹⁰;
- 98 (2) enabling the registrar to cancel an application by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002 in specified circumstances¹¹;
- 99 (3) enabling the registrar, in particular, to cancel an application by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002 if he thinks that plans submitted with it (whether as part of a commonhold community statement¹² or otherwise) are insufficiently clear or accurate¹³;
- 100 (4) about the order in which commonhold registration documents and general registration documents¹⁴ are to be dealt with by the registrar¹⁵;
- 101 (5) for registration to take effect (whether or not retrospectively) as from a date or time determined in accordance with the rules¹⁶.

An application must be accompanied by the following documents¹⁷:

- 102 (a) the commonhold association's certificate of incorporation¹⁸, and any altered certificate of incorporation¹⁹ issued under the companies legislation²⁰;
- 103 (b) the memorandum and articles of association of the commonhold association²¹;
- 104 (c) the commonhold community statement²²;
- 105 (d) where consent is required²³:
 - 13
 - 25. (i) the consent²⁴;
 - 26. (ii) an order of a court²⁵ dispensing with the requirement for consent²⁶; or
 - 27. (iii) evidence of deemed consent²⁷;
- 14
- 106 (e) a certificate given by the directors²⁸ of the commonhold association²⁹ that:
 - 15
 - 28. (i) the memorandum and articles of association submitted with the application³⁰ comply with the regulations specifying their form and content³¹;
 - 29. (ii) the commonhold community statement submitted with the application³² satisfies the requirements of Part 1 of the Commonhold and Leasehold Reform Act 2002³³;
 - 30. (iii) the application does not relate wholly or partly to land which may not be registered as commonhold land³⁴;
 - 31. (iv) the commonhold association has not traded³⁵; and
 - 32. (v) the commonhold association has not incurred any liability which has not been discharged³⁶.

The application must also be accompanied by the prescribed fee³⁷.

The rules may also make provision about the satisfaction of a requirement for an application by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002 to be accompanied by a document³⁸.

The registrar must ensure that in respect of any commonhold land the following are kept in his custody and referred to in the register³⁹:

- 107 (A) the details of the commonhold association as prescribed by regulations⁴⁰;
- 108 (B) the details of the registered freeholder of each commonhold unit as prescribed by regulations⁴¹;
- 109 (C) a copy of the commonhold community statement⁴²;
- 110 (D) a copy of the memorandum and articles of association of the commonhold association⁴³.

The registrar may arrange for a document or information to be kept in his custody and referred to in the register in respect of commonhold land if the document or information is not mentioned under heads (A) to (D) above, but is submitted to the registrar in accordance with a provision made by or by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002⁴⁴.

Where the registrar thinks it appropriate in consequence of or for the purpose of anything done or proposed to be done in connection with Part 1 of the Commonhold and Leasehold Reform Act 2002, he may make or cancel an entry on the register, or take any other action⁴⁵.

1 As to the meaning of 'the registrar' see PARA 309 note 13.

2 As to the meaning of 'land' see PARA 301 note 2. As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq. As to the registration of land generally see **LAND REGISTRATION**; and as to the application of land registration rules see PARA 319.

3 As to the meaning of 'commonhold land' see PARA 302.

4 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), a person is the 'registered freeholder' of land if:

48 (1) he is registered as the proprietor of a freehold estate in the land with absolute title (s 2(3)(a)); or

49 (2) he has applied, and the registrar is satisfied that he is entitled, to be so registered (s 2(3)(b)).

As to the meaning of 'registered' see PARA 309 note 10; and as to the meaning of 'person' see PARA 301 note 20. As to the proprietor of an estate in land see **LAND REGISTRATION**; **REAL PROPERTY**.

5 Commonhold and Leasehold Reform Act 2002 s 2(1)(a). An application must be accompanied by the documents listed in Sch 1: see the text and notes 18-36. The application is made under s 2. It must be made in the prescribed form: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 5(1). For the prescribed form of application see Sch 1, Form CM1. Unless the Registrar otherwise directs, the application must be accompanied by a statutory statement of truth made by the applicant that complies with r 6: r 5(3) (rr 5(3), 6 amended by SI 2008/1920). The statement of truth must comply with the following provisions: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 6(1) (as so amended). The statement must list the consents, or orders of court dispensing with consent, that have been obtained under or by virtue of the Commonhold and Leasehold Reform Act 2002 s 3 (see PARAS 314, 316): Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 6(2) (as so amended). Where there is a restriction entered in any individual register affected by the application, the statement must confirm that either the restriction does not protect an interest in respect of which the consent of the holder is required or, if it does, that the appropriate consent has been obtained: r 6(3) (as so amended). The statement must confirm that (1) no other consents are required under or by virtue of the Commonhold and Leasehold Reform Act 2002 s 3; (2) no consent has lapsed or been withdrawn; and (3) if a consent is subject to conditions, all conditions have been fully satisfied: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 6(4) (as so amended). Where the application involves the extinguishment under the

Commonhold and Leasehold Reform Act 2002 s 22 of a charge that is the subject of an entry in the register (see PARA 351), the statement must (a) identify the charge to be extinguished; (b) identify the title of the owner of the charge; (c) give the name and address of the owner of the charge; and (d) confirm that the consent of the owner of the charge has been obtained: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 6(5) (as so amended). The statement of truth must be in a form that meets the requirements of the Land Registration Rules 2003, SI 2003/1417, r 215A (added by SI 2008/1919) (see **LAND REGISTRATION**): see Land Registry Practice Guide no 60 *Commonhold* (June 2009) para 5.2.1. The registrar must accept the statement of truth as conclusive evidence that no additional consents are required under or by virtue of the Commonhold and Leasehold Reform Act 2002 s 3 and must cancel any entry in the register relating to an interest that has been identified in the statement of truth to be extinguished: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 6(6) (as so amended).

As to applications during the transitional period see PARA 323.

6 Commonhold and Leasehold Reform Act 2002 s 2(1)(b). Existing commonhold land would be (or would be about to become) either a commonhold unit or common parts and as such is subject rather to the rules governing the adding of land to a commonhold or subtracting from it: see PARAS 334, 352. As to the meaning of 'a commonhold' see PARA 302 note 8; as to the meaning of 'commonhold unit' see PARA 330; and as to the meaning of 'common parts' see PARA 332.

7 Any rules so made:

- 50 (1) must be made by statutory instrument in the same manner as land registration rules within the meaning of the Land Registration Act 2002 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1125) (Commonhold and Leasehold Reform Act 2002 s 65(2)(a));
- 51 (2) may make provision for any matter for which provision is or may be made by land registration rules (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1125 et seq) (s 65(2)(b)); and
- 52 (3) may provide for land registration rules to have effect in relation to anything done by virtue of or for the purposes of Pt 1 as they have effect in relation to anything done by virtue of or for the purposes of the Land Registration Act 2002 (Commonhold and Leasehold Reform Act 2002 s 65(2)(c); and see PARA 319).

In the exercise of his powers under s 65, the Lord Chancellor has made the Commonhold (Land Registration) Rules 2004, SI 2004/1830, which came into force on 27 September 2004: see r 1. As to those rules see notes 5, 8; and PARAS 306, 314-319, 322 et seq, 332, 334, 313, 356, 359-360, 344, 350, 352.

8 Commonhold and Leasehold Reform Act 2002 s 65(1)(a). For these purposes, 'commonhold registration document' means an application or other document sent to the registrar by virtue of Pt 1: s 65(6). A commonhold registration document must be accompanied by such fee (if any) as is specified for that purpose by order under the Land Registration Act 2002 s 102 (fee orders: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1071): Commonhold and Leasehold Reform Act 2002 s 65(5). As to registration in error see PARA 321.

Where the Commonhold and Leasehold Reform Act 2002 Pt 1 requires, or the Commonhold (Land Registration) Rules 2004, SI 2004/1830, require an application to be accompanied by a document referred to in r 4(1), a certified copy of that document may be submitted in place of the original (r 4(2)); and where the original document is lodged a certified copy must accompany it (r 4(3)). Rule 4 applies to: (1) the commonhold association's certificate of incorporation; (2) any altered certificate of incorporation; (3) the memorandum and articles of association of the commonhold association; (4) any altered memorandum or articles of association of the commonhold association; (5) a commonhold community statement; (6) any amended commonhold community statement; (7) an order of the court under the Commonhold and Leasehold Reform Act 2002 Pt 1; and (8) a termination statement: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 4(1).

9 Commonhold and Leasehold Reform Act 2002 s 65(1)(b).

10 Commonhold and Leasehold Reform Act 2002 s 65(3)(a).

11 Commonhold and Leasehold Reform Act 2002 s 65(3)(b).

12 As to the meaning of 'commonhold community statement' see PARA 311.

13 Commonhold and Leasehold Reform Act 2002 s 65(3)(c). Plans must meet the technical requirements and specifications set out in Land Registry Practice Guide no 60 *Commonhold* (June 2009) para 4.3. The Land Registry offers an optional service to approve the commonhold community statement plan before the application for registration is submitted: see para 4.3.3.

- 14 For these purposes, 'general registration document' means a document sent to the registrar under a provision of the Land Registration Act 2002 (see **LAND REGISTRATION**): Commonhold and Leasehold Reform Act 2002 s 65(6).
- 15 Commonhold and Leasehold Reform Act 2002 s 65(3)(d).
- 16 Commonhold and Leasehold Reform Act 2002 s 65(3)(e).
- 17 Commonhold and Leasehold Reform Act 2002 s 2(2). The list of documents required under s 2(2) does not apply to an application to add land: see PARA 334.
- 18 Commonhold and Leasehold Reform Act 2002 Sch 1 para 2. As to the meaning of 'commonhold association' see PARA 305. The certificate of incorporation is issued under the Companies Act 1985 s 13 (repealed as from 1 October 2009 by the Companies Act 2006 Sch 16 and replaced as from that date by the Companies Act 2006 ss 15, 16): see **COMPANIES** vol 14 (2009) PARA 119.
- 19 An altered certificate is issued under the Companies Act 1985 s 28 (repealed as from 1 October 2009 by the Companies Act 2006 Sch 16 and replaced as from that date by provisions of the Companies Act 2006 ss 67, 68, 75, 77, 80-81): see **COMPANIES** vol 14 (2009) PARA 205.
- 20 Commonhold and Leasehold Reform Act 2002 Sch 1 para 3.
- 21 Commonhold and Leasehold Reform Act 2002 Sch 1 para 4. As to the memorandum and articles of association see PARA 306.
- 22 Commonhold and Leasehold Reform Act 2002 Sch 1 para 5.
- 23 Consent may be required under or by virtue of the Commonhold and Leasehold Reform Act 2002 s 3 (see PARA 314): Sch 1 para 6(1). See also PARA 325.
- 24 Commonhold and Leasehold Reform Act 2002 Sch 1 para 6(1)(a).
- 25 It is an order issued by virtue of the Commonhold and Leasehold Reform Act 2002 s 3(2)(f): see PARA 314. As to the meaning of 'court' see PARA 301 note 17. In the case of a conditional order under s 3(2)(f), the order must be accompanied by evidence that the condition has been complied with: Sch 1 para 6(2).
- 26 Commonhold and Leasehold Reform Act 2002 Sch 1 para 6(1)(b).
- 27 Commonhold and Leasehold Reform Act 2002 Sch 1 para 6(1)(c). Consent may be deemed by virtue of s 3(2)(e) (see PARA 314): Sch 1 para 6(1)(c).
- 28 As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.
- 29 Commonhold and Leasehold Reform Act 2002 Sch 1 para 7.
- 30 See the Commonhold and Leasehold Reform Act 2002 Sch 1 para 4; and head (b) in the text.
- 31 Commonhold and Leasehold Reform Act 2002 Sch 1 para 7(a). The regulations referred to are made under Sch 3 para 2(1): see PARA 306.
- 32 See the Commonhold and Leasehold Reform Act 2002 Sch 1 para 5; and head (c) in the text.
- 33 Commonhold and Leasehold Reform Act 2002 Sch 1 para 7(b). As to the requirements that need to be satisfied by the commonhold community statement see PARAS 311, 313.
- 34 Commonhold and Leasehold Reform Act 2002 Sch 1 para 7(c). This condition satisfies the requirements of Sch 2: see PARA 304.
- 35 Commonhold and Leasehold Reform Act 2002 Sch 1 para 7(d).
- 36 Commonhold and Leasehold Reform Act 2002 Sch 1 para 7(e).
- 37 For the prescribed fees for registration of a freehold estate in land as a freehold estate in commonhold land see the Land Registration Fee Order 2009, SI 2009/845, Sch 3 Pt 1 paras (14), (17).
- 38 Commonhold and Leasehold Reform Act 2002 s 65(4). In particular, the rules may:

- 53 (1) permit or require a copy of a document to be submitted in place of or in addition to the original (s 65(4)(a); and see note 8);
- 54 (2) require a copy to be certified in a specified manner (s 65(4)(b));
- 55 (3) permit or require the submission of a document in electronic form (s 65(4)(c)).

As to the submission of documents in electronic form see **LAND REGISTRATION**.

39 Commonhold and Leasehold Reform Act 2002 s 5(1).

40 Commonhold and Leasehold Reform Act 2002 s 5(1)(a). For the purposes of Pt 1, 'prescribed' means prescribed by regulations: s 64(1).

41 Commonhold and Leasehold Reform Act 2002 s 5(1)(b). This provision does not apply during a transitional period within the meaning of s 8 (see PARA 323): s 5(3).

42 Commonhold and Leasehold Reform Act 2002 s 5(1)(c).

43 Commonhold and Leasehold Reform Act 2002 s 5(1)(d).

44 Commonhold and Leasehold Reform Act 2002 s 5(2).

45 Commonhold and Leasehold Reform Act 2002 s 67(4). This provision is subject to s 6(2) (see PARA 321): s 67(5). As to rejection or cancellation of the application see further PARA 327.

UPDATE

320 Application for the registration of commonhold land

NOTE 5--SI 2004/1830 Sch 1, Form CM1 amended: SI 2009/2024.

NOTE 8--SI 2004/1830 r 4(1) amended: SI 2009/2024.

TEXT AND NOTES 18, 20, 21, 43--Commonhold and Leasehold Reform Act 2002 s 5(1)(d), Sch 1 paras 1-3 amended: SI 2009/1941.

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321. Error in registration of commonhold land.

Where a freehold estate in land¹ is registered² as a freehold estate in commonhold land³ and:

- 111 (1) the application for registration was not made in accordance with the statutory requirements⁴; or
- 112 (2) the certificate that must be given by the directors⁵ of the commonhold association⁶ was inaccurate⁷; or
- 113 (3) the registration contravened a provision made by or by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002⁸,

the following provisions apply⁹:

- 114 (a) the register¹⁰ may not be altered by the registrar¹¹; and
- 115 (b) the court¹² may grant a declaration that the freehold estate should not have been registered as a freehold estate in commonhold land¹³.

On granting such a declaration, the court may make any order which appears to it to be appropriate¹⁴ and, in particular, may¹⁵:

- 116 (i) provide for the registration to be treated as valid for all purposes¹⁶;
- 117 (ii) provide for alteration of the register¹⁷;
- 118 (iii) provide for land to cease to be commonhold land¹⁸;
- 119 (iv) require a director or other specified officer of a commonhold association to take steps to alter or amend a document¹⁹;
- 120 (v) require a director or other specified officer of a commonhold association to take specified steps²⁰;
- 121 (vi) make an award of compensation (whether or not contingent upon the occurrence or non-occurrence of a specified event) to be paid by one specified person to another²¹;
- 122 (vii) apply, disapply or modify a provision of the Land Registration Act 2002 relating to indemnity²².

An application to give effect in the register to an order of the court under the above provisions must be made in the prescribed form²³.

1 As to the meaning of 'land' see PARA 301 note 2. As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

2 As to the meaning of 'registered' see PARA 309 note 10.

3 As to the registration of a freehold estate in commonhold land see the Commonhold and Leasehold Reform Act 2002 s 2; and PARA 320. As to the meaning of 'commonhold land' see PARA 302.

4 Commonhold and Leasehold Reform Act 2002 s 6(1)(a). The statutory requirements referred to in the text are those under s 2: see PARA 320.

- 5 As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.
- 6 As to the meaning of 'commonhold association' see PARA 305.
- 7 Commonhold and Leasehold Reform Act 2002 s 6(1)(b). The certificate referred to in the text is that required under Sch 1 para 7: see PARA 320.
- 8 Commonhold and Leasehold Reform Act 2002 s 6(1)(c).
- 9 Commonhold and Leasehold Reform Act 2002 s 6(1).
- 10 As to the meaning of 'the register' see PARA 309 note 10.
- 11 Commonhold and Leasehold Reform Act 2002 s 6(2). As to the meaning of 'the registrar' see PARA 309 note 13. The register may otherwise be altered under the Land Registration Act 2002 Sch 4: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 976 et seq.
- 12 As to the meaning of 'court' see PARA 301 note 17.
- 13 Commonhold and Leasehold Reform Act 2002 s 6(3). Such a declaration may be granted only on the application of a person who claims to be adversely affected by the registration: s 6(4). As to the meaning of 'person' see PARA 301 note 20.
- 14 Commonhold and Leasehold Reform Act 2002 s 6(5).
- 15 Commonhold and Leasehold Reform Act 2002 s 6(6).
- 16 Commonhold and Leasehold Reform Act 2002 s 6(6)(a).
- 17 Commonhold and Leasehold Reform Act 2002 s 6(6)(b).
- 18 Commonhold and Leasehold Reform Act 2002 s 6(6)(c). See further PARA 361.
- 19 Commonhold and Leasehold Reform Act 2002 s 6(6)(d).
- 20 Commonhold and Leasehold Reform Act 2002 s 6(6)(e).
- 21 Commonhold and Leasehold Reform Act 2002 s 6(6)(f).
- 22 Commonhold and Leasehold Reform Act 2002 s 6(6)(g). The provisions referred to in the text are those of the Land Registration Act 2002 Sch 8: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 983 et seq.
- 23 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 12. For the prescribed form see the Land Registration Rules 2003, SI 2003/1417, Sch 1, Form AP1.

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 ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/322.
 Registration of commonhold land where the proposed unit-holders are not identified.

322. Registration of commonhold land where the proposed unit-holders are not identified.

Where a freehold estate in land¹ is registered² as a freehold estate in commonhold land³, and the application⁴ is not accompanied by a statement⁵ which includes a list of the commonhold units⁶ and, in relation to each, the prescribed details⁷ of the proposed initial unit-holder or joint unit-holders⁸, the following provisions apply⁹.

On registration¹⁰:

- 123 (1) the applicant¹¹ continues to be registered as the proprietor¹² of the freehold estate in the commonhold land¹³; and
- 124 (2) the rights and duties conferred and imposed by the commonhold community statement¹⁴ do not come into force¹⁵.

Where, after registration, a person¹⁶ other than the applicant becomes entitled to be registered as the proprietor of the freehold estate in one or more, but not all, of the commonhold units¹⁷:

- 125 (a) the commonhold association¹⁸ is entitled to be registered as the proprietor of the freehold estate in the common parts¹⁹;
- 126 (b) the registrar²⁰ must register the commonhold association as such²¹ (without an application being made)²²;
- 127 (c) the rights and duties conferred and imposed by the commonhold community statement²³ come into force²⁴; and
- 128 (d) any lease²⁵ of the whole or part of the commonhold land is extinguished²⁶.

Where a lease the title to which is registered is extinguished under head (d) above and the registrar is aware that the transitional period has come to an end²⁷, he must give notice of the closure of the leasehold title to the following:

- 129 (i) the registered proprietor of the leasehold title;
- 130 (ii) the registered proprietor of any charge affecting the leasehold title, and
- 131 (iii) the person entitled to the benefit of a notice, a restriction or a caution against dealings entered in the register of the leasehold title²⁸;

and where an unregistered lease which is noted in the register of the freehold title is extinguished under that head and the registrar is aware that the transitional period has come to an end²⁹, he must give notice of the completion of the application to the holder of the leasehold estate that has been extinguished³⁰. The registrar is not, however, obliged to give notice to a person referred to above if either that person consented³¹ to the application, or that person's name and his address for service³² are not set out in the relevant individual register³³.

1 As to the meaning of 'land' see PARA 301 note 2. As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

2 As to the meaning of 'registered' see PARA 309 note 10.

- 3 As to the registration of a freehold estate in commonhold land see PARA 320. As to the meaning of 'commonhold land' see PARA 302.
- 4 The application referred to in the text is one that is made in pursuance of the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320.
- 5 The statement referred to in the text is one that is made under the Commonhold and Leasehold Reform Act 2002 s 9(1)(b): see PARA 324.
- 6 As to the meaning of 'commonhold unit' see PARA 330.
- 7 See PARA 320.
- 8 As to the meanings of 'unit-holder' and 'joint unit-holder' see PARA 331.
- 9 Commonhold and Leasehold Reform Act 2002 s 7(1).
- 10 Commonhold and Leasehold Reform Act 2002 s 7(2).
- 11 Is the applicant under the Commonhold and Leasehold Reform Act 2002 s 2: see note 4.
- 12 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.
- 13 Commonhold and Leasehold Reform Act 2002 s 7(2)(a). Where s 7 has effect following an application to add land (see PARA 325), the reference to 'the commonhold land' in s 7(2)(a) is treated as a reference to the added land: s 41(6)(a). As to the completion of registration see PARA 328.
- 14 As to the meaning of 'commonhold community statement' see PARA 311.
- 15 Commonhold and Leasehold Reform Act 2002 s 7(2)(b). This is subject to the transitional provisions under s 8(2)(b) (see PARA 323): s 7(2)(b). Where s 7 has effect following an application to add land (see PARA 325), the reference in s 7(2)(b) to the rights and duties conferred and imposed by the commonhold community statement is treated as a reference to rights and duties only in so far as they affect the added land: s 41(6)(b).
- 16 As to the meaning of 'person' see PARA 301 note 20.
- 17 Commonhold and Leasehold Reform Act 2002 s 7(3).
- 18 As to the meaning of 'commonhold association' see PARA 305.
- 19 Commonhold and Leasehold Reform Act 2002 s 7(3)(a). A charge which relates wholly or partly to the common parts is extinguished to the extent that it relates to the common parts: see s 28(3); and PARA 332. As to the meaning of 'common parts' see PARA 332.
- 20 As to the meaning of 'the registrar' see PARA 309 note 13.
- 21 Is the commonhold association must be registered as the proprietor of the freehold estate in the common parts in accordance with the Commonhold and Leasehold Reform Act 2002 s 7(3)(a): see the text and notes 18-19.
- 22 Commonhold and Leasehold Reform Act 2002 s 7(3)(b).
- 23 As to the rights and duties conferred and imposed by the commonhold community statement see PARAS 311, 313.
- 24 Commonhold and Leasehold Reform Act 2002 s 7(3)(c). Where s 7 has effect following an application to add land (see PARA 325), the reference in s 7(3)(c) to the rights and duties conferred and imposed by the commonhold community statement is treated as a reference to rights and duties only in so far as they affect the added land: s 41(6)(b).
- 25 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 7, 'lease' means a lease which: (1) is granted for any term; and (2) is granted before the commonhold association becomes entitled to be registered as the proprietor of the freehold estate in the common parts: s 7(4)(a), (b).
- 26 Commonhold and Leasehold Reform Act 2002 s 7(3)(d). As to compensation for the extinguishment of leases see PARA 329. Where s 7 has effect following an application to add land (see PARA 325), the reference to 'the commonhold land' in s 7(3)(d) is treated as a reference to the added land: s 41(6)(a).

27 le where the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 29(2) applies: see PARA 323. As to the transitional period see PARA 323.

28 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 11(1).

29 See note 27.

30 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 11(2).

31 le under the Commonhold and Leasehold Reform Act 2002 s 3: see PARA 314.

32 le under the Land Registration Rules 2003, SI 2003/1417, r 198: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1130.

33 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 11(3).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2.
 ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/323.
 Transitional period for the purposes of registration of commonhold land.

323. Transitional period for the purposes of registration of commonhold land.

The period between the registration of the freehold estate in land¹ as a freehold estate in commonhold land² and the time when a person³ other than the applicant⁴ becomes entitled to be registered⁵ as the proprietor⁶ of the freehold estate in one or more, but not all, of the commonhold units⁷ is known as the 'transitional period'⁸.

Regulations⁹ may provide that during a transitional period a relevant provision¹⁰ either does not have effect¹¹, or has effect with specified modifications¹².

The registrar¹³ must arrange for the freehold estate in land to cease to be registered as a freehold estate in commonhold land if the registered proprietor makes an application¹⁴ to the registrar during the transitional period¹⁵. When satisfied that the application is in order, the registrar must cancel to the necessary extent the commonhold entries¹⁶ made¹⁷ in the register¹⁸.

Where the application for registration was made without identifying the unit-holders¹⁹ and the registrar is aware that the transitional period has come to an end, he must:

- 132 (1) cancel the entries made in the register postponing the coming into force of the rights and duties conferred and imposed by the commonhold community statement²⁰;
- 133 (2) cancel notice of any lease extinguished as a result of a person other than the applicant becoming entitled to be registered as the proprietor of the freehold estate in one or more, but not all, of the commonhold units²¹; and
- 134 (3) close the title to any such lease where the lease is registered²².

1 As to the meaning of 'land' see PARA 301 note 2. As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq. As to the registration of land generally see **LAND REGISTRATION**.

2 As to the meaning of 'commonhold land' see PARA 302. As to the registration of a freehold estate in land as commonhold land see PARA 320.

3 As to the meaning of 'person' see PARA 301 note 20.

4 I.e. the person making an application for registration under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320.

5 As to the meaning of 'registered' see PARA 309 note 10. As to the applicant's entitlement to be registered see PARA 322.

6 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.

7 The time when such a person is so entitled is determined by the Commonhold and Leasehold Reform Act 2002 s 7(3): see PARA 322. As to the meaning of 'commonhold unit' see PARA 330.

8 Commonhold and Leasehold Reform Act 2002 s 8(1).

9 As to the making of regulations under the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70) generally see PARA 301 note 12.

10 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 8, 'relevant provision' means a provision made:

56 (1) by or by virtue of Pt 1 (s 8(3)(a));

57 (2) by a commonhold community statement (s 8(3)(b)); or

58 (3) by the memorandum or articles of the commonhold association (s 8(3)(c)).

As to the meaning of 'commonhold community statement' see PARA 311. As to the memorandum and articles of association of the commonhold association see PARA 306.

11 Commonhold and Leasehold Reform Act 2002 s 8(2)(a). See note 9.

12 Commonhold and Leasehold Reform Act 2002 s 8(2)(b). See note 9.

13 As to the meaning of 'the registrar' see PARA 309 note 13.

14 Ie under the Commonhold and Leasehold Reform Act 2002 s 8(4): see the text and note 15. The provisions about consent made by or under s 2 (see PARA 320), s 3 (see PARA 314) and Sch 1 (see PARA 320) apply in relation to such an application as they apply in relation to an application under s 2: s 8(5). See also note 15.

An application for the freehold estate in land to cease to be registered as a freehold estate in commonhold land during the transitional period must be made in the prescribed form: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 14(1). For the prescribed form see Sch 1, Form CM2. Unless the registrar otherwise directs, the application must be accompanied by (1) a statement of truth made by the applicant that complies with r 6 (see PARA 320 note 5) to the extent necessary; and (2) all necessary consents in the prescribed form (as to which see note 15): r 14(3) (amended by SI 2008/1920). For the prescribed fee for such an application see the Land Registration Fee Order 2009, SI 2009/845, Sch 3 Pt 1 para (16).

15 Commonhold and Leasehold Reform Act 2002 s 8(4). Consent to an application under s 8(4) must be given in the prescribed form: Commonhold Regulations 2004, SI 2004/1829, reg 4(1)(b). For the prescribed form of consent see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form CON 2. As to the details of consent see PARA 315.

16 'Commonhold entries' means the entries referred to in the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 28(1)(a)-(c) (see PARA 328): r 2(1).

17 Ie made under the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 28(1)(a)-(c): see PARA 328.

18 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 14(2).

19 Ie where an application has been made under the Commonhold and Leasehold Reform Act 2002 s 2 (see PARA 320) and it was not accompanied by the form prescribed by the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form COV: see r 29(1).

20 Ie the entries made in the register under the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 28(1)(c): see PARA 328.

21 Ie any lease extinguished under the Commonhold and Leasehold Reform Act 2002 s 7(3)(d): see PARA 322.

22 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 29(2).

UPDATE

323 Transitional period for the purposes of registration of commonhold land

NOTE 10--Commonhold and Leasehold Reform Act 2002 s 8(3)(c) amended: SI 2009/1941.

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 ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/324.
 Registration of commonhold land where the proposed unit-holders are identified.

324. Registration of commonhold land where the proposed unit-holders are identified.

The following provisions¹ apply in relation to a freehold estate² in commonhold land³ if⁴:

- 135 (1) it is registered⁵ as a freehold estate in commonhold land in pursuance of an application for registration⁶; and
- 136 (2) the application is accompanied by a statement by the applicant requesting that these provisions should apply⁷, and the statement includes a list of the commonhold units⁸ giving in relation to each one the prescribed⁹ details of the proposed initial unit-holder or joint unit-holders¹⁰.

On registration¹¹:

- 137 (a) the commonhold association¹² is entitled to be registered as the proprietor¹³ of the freehold estate in the common parts¹⁴;
- 138 (b) a person¹⁵ specified¹⁶ as the initial unit-holder of a commonhold unit is entitled to be registered as the proprietor of the freehold estate in the unit¹⁷;
- 139 (c) a person specified¹⁸ as an initial joint unit-holder of a commonhold unit is entitled to be registered as one of the proprietors of the freehold estate in the unit¹⁹;
- 140 (d) the registrar²⁰ must make entries in the register²¹ to reflect heads (a), (b) and (c) above (without applications being made)²²;
- 141 (e) the rights and duties conferred and imposed by the commonhold community statement²³ come into force²⁴; and
- 142 (f) any lease²⁵ of the whole or part of the commonhold land is extinguished²⁶.

Where, as the result of an application to register a freehold estate in land as a freehold estate in commonhold land²⁷, a lease the title to which is registered is extinguished under head (f) above, the registrar must give notice of the closure of the leasehold title to the following:

- 143 (i) the registered proprietor of the leasehold title;
- 144 (ii) the registered proprietor of any charge affecting the leasehold title; and
- 145 (iii) the person entitled to the benefit of a notice, a restriction or a caution against dealings entered in the register of the leasehold title²⁸;

and where, as the result of such an application, an unregistered lease which is noted in the register of the freehold title is extinguished under that head, the registrar must give notice of the completion of the application to the holder of the leasehold estate that has been extinguished²⁹. The registrar is not, however, obliged to give notice to a person referred to above if either that person consented³⁰ to the application, or that person's name and his address for service³¹ are not set out in the relevant individual register³².

¹ ie the Commonhold and Leasehold Reform Act 2002 s 9: see the text and notes 2-26.

- 2 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq. As to the meaning of 'land' see PARA 301 note 2.
- 3 As to the meaning of 'commonhold land' see PARA 302.
- 4 Commonhold and Leasehold Reform Act 2002 s 9(1).
- 5 As to the meaning of 'registered' see PARA 309 note 10.
- 6 Commonhold and Leasehold Reform Act 2002 s 9(1)(a). An application for registration is made under s 2: see PARA 320. The application must be made in the prescribed form (see PARA 320 note 5) and be accompanied by the statement required by s 9(1)(b) (see the text and note 7): Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 5(1). Unless the registrar directs otherwise, it must also be accompanied by a statement of truth: see rr 5(3), 6 (amended by SI 2008/1920) and PARA 320 note 5.
- 7 Commonhold and Leasehold Reform Act 2002 s 9(1)(b). The statement required by s 9(1)(b) must be in the prescribed form: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 5(2). For the prescribed form of statement see Sch 1, Form COV. The statement must, in relation to each commonhold unit, state (1) the full name of the proposed initial unit-holder or if there are proposed joint unit-holders the full name of each of them; (2) the address for service of the proposed unit-holder or if there are proposed joint unit-holders the address for service of each of them; (3) the unit number of the commonhold unit; and (4) the postal address of the commonhold unit (if available): Commonhold Regulations 2004, SI 2004/1829, reg 6.
- 8 As to the meaning of 'commonhold units' see PARA 330.
- 9 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12.
- 10 Commonhold and Leasehold Reform Act 2002 s 9(2). As to the meanings of 'unit-holder' and 'joint unit-holder' see PARA 331.
- 11 As to the completion of registration see PARA 328.
- 12 As to the meaning of 'commonhold association' see PARA 305.
- 13 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.
- 14 Commonhold and Leasehold Reform Act 2002 s 9(3)(a). A charge which relates wholly or partly to the common parts is extinguished to the extent that it relates to the common parts: see s 28(3); and PARA 332. As to the meaning of 'common parts' see PARA 332.
- 15 As to the meaning of 'person' see PARA 301 note 20.
- 16 As specified by virtue of the Commonhold and Leasehold Reform Act 2002 s 9(2): see the text and notes 8-10.
- 17 Commonhold and Leasehold Reform Act 2002 s 9(3)(b).
- 18 As specified by virtue of s 9(2): see the text and notes 8-10.
- 19 Commonhold and Leasehold Reform Act 2002 s 9(3)(c).
- 20 As to the meaning of 'the registrar' see PARA 309 note 13.
- 21 As to the meaning of 'the register' see PARA 309 note 10.
- 22 Commonhold and Leasehold Reform Act 2002 s 9(3)(d). This provision has the effect of ensuring that where people are living in a development which is converting to a commonhold and the necessary requirements are met, there is no transitional period (see PARA 323) and the commonhold comes into existence at once.
- 23 As to the rights and duties conferred and imposed by a commonhold community statement see PARAS 311, 313. As to the meaning of 'commonhold community statement' see PARA 311.
- 24 Commonhold and Leasehold Reform Act 2002 s 9(3)(e). Where s 9 has effect following an application to add land (see PARA 325), the reference in s 9(3)(e) to the rights and duties conferred and imposed by the commonhold community statement is treated as a reference to rights and duties only in so far as they affect the added land: s 41(6)(b).

25 For the purpose of the Commonhold and Leasehold Reform Act 2002 s 9, 'lease' means a lease which: (1) is granted for any term; and (2) is granted before the commonhold association becomes entitled to be registered as the proprietor of the freehold estate in the common parts: s 9(4).

26 Commonhold and Leasehold Reform Act 2002 s 9(3)(f). Where s 9 has effect following an application to add land, the reference to 'the commonhold land' in s 9(3)(f) is treated as a reference to the added land: s 41(6) (a).

27 Ie an application under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320.

28 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 10(1).

29 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 10(2).

30 Ie under the Commonhold and Leasehold Reform Act 2002 s 3: see PARA 314.

31 Ie under the Land Registration Rules 2003, SI 2003/1417, r 198: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1130.

32 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 10(3).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/325. Application to register land added to the commonhold.

325. Application to register land added to the commonhold.

If the commonhold association¹ for the purposes of an application for registration² already exercises functions in relation to commonhold land³, the following provisions⁴ apply⁵.

An application to add land may not be made unless it is approved by a resolution of the commonhold association⁶. For this purpose, the resolution must be passed before the application to add land is made⁷, and unanimously⁸.

The application must be accompanied by the following documents⁹:

- 146 (1) the documents required in relation to consent¹⁰;
- 147 (2) an application¹¹ for the registration of an amended commonhold community statement¹² which makes provision for the existing commonhold and the added land¹³; and
- 148 (3) a certificate given by the directors¹⁴ of the commonhold association that the application to add land has been approved in the required manner¹⁵ and does not relate to land which may not be held as commonhold land¹⁶.

In the case of an application to add land where the whole of the added land is to form part of the common parts¹⁷ of a commonhold¹⁸:

- 149 (a) the provisions relating to registration without unit-holders¹⁹ do not apply²⁰;
- 150 (b) on registration the commonhold association is entitled to be registered²¹ (if it is not already) as the proprietor²² of the freehold estate²³ in the added land²⁴;
- 151 (c) the registrar²⁵ must make any registration required under head (b) above (without an application being made)²⁶; and
- 152 (d) the rights and duties conferred and imposed by the commonhold community statement²⁷, in so far as they affect the added land, come into force on registration²⁸.

An application to add land to a commonhold must be accompanied by the prescribed fee²⁹.

The registrar may reject on delivery the application to add land, or he may cancel it at any time thereafter, if it is not accompanied by an application to register the amended commonhold community statement³⁰.

1 As to the meaning of 'commonhold association' see PARA 305.

2 An application for the registration of commonhold land is generally made under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320. As to the meaning of 'commonhold land' see PARA 302. For the purposes of s 41, the application is referred to as an 'application to add land' (s 41(2)(a)); and the land to which the application relates is referred to as the 'added land' (s 41(2)(b)). Where s 7 (see PARA 322) and s 9 (see PARA 324) have effect following an application to add land, the references to 'the commonhold land' in s 7(2)(a) (see PARA 322 head (1)), s 7(3)(d) (see PARA 322 head (d)) and s 9(3)(f) (see PARA 324 head (f)) are treated as references to the added land: s 41(6)(a). As to the meaning of 'land' see PARA 301 note 2.

3 As to the exercise by a commonhold association of functions in relation to commonhold land see PARA 302 note 8.

- 4 le the Commonhold and Leasehold Reform Act 2002 s 41: see the text and notes 5-28.
- 5 Commonhold and Leasehold Reform Act 2002 s 41(1).
- 6 Commonhold and Leasehold Reform Act 2002 s 41(3). As to the passing of a resolution by a commonhold association see PARA 336. As to land which may not be registered as commonhold land see PARA 304.
An application to add land within the meaning of s 41 must be made in the prescribed form: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 20(1). For the prescribed form see Sch 1, Form CM4. Such an application must be accompanied by an application to register the amended commonhold community statement in the prescribed form: r 20(2). For the prescribed form see Sch 1, Form CM3; and see further PARA 326. Unless the registrar otherwise directs the application must be accompanied by a statement of truth by the applicant that complies with r 6 (see PARA 320 note 5) to the extent necessary: r 20(4) (amended by SI 2008/1920).
- 7 Commonhold and Leasehold Reform Act 2002 s 41(4)(a).
- 8 Commonhold and Leasehold Reform Act 2002 s 41(4)(b). A resolution is passed unanimously if every member who casts a vote votes in favour: see s 36(4); and PARA 336.
- 9 Commonhold and Leasehold Reform Act 2002 s 41(5). Because s 2(2) (see PARA 320) does not apply to an application to add land, the requirement to supply all the documents listed in Sch 1 (see PARA 320) is lifted for this purpose.
- 10 Commonhold and Leasehold Reform Act 2002 s 41(5)(a). The documents referred to in the text are those specified in Sch 1 para 6: see PARA 320. For the prescribed form of consent see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 7, Sch 1, Form CON 1.
- 11 le the application made under the Commonhold and Leasehold Reform Act 2002 s 33: see PARA 313.
- 12 As to the amendment of a commonhold community statement see PARAS 313, 326. As to the meaning of 'commonhold community statement' see PARA 311.
- 13 Commonhold and Leasehold Reform Act 2002 s 41(5)(b).
- 14 As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.
- 15 le that the application to add land satisfies the Commonhold and Leasehold Reform Act 2002 s 41(3) (see the text and note 6): s 41(5)(c).
- 16 le that the application to add land satisfies the Commonhold and Leasehold Reform Act 2002 Sch 2 (see PARAS 304, 320): s 41(5)(c).
- 17 As to the meaning of 'common parts' see PARA 332.
- 18 Commonhold and Leasehold Reform Act 2002 s 41(7). As to the meaning of 'a commonhold' see PARA 302 note 8.
- 19 le the provisions under the Commonhold and Leasehold Reform Act 2002 s 7: see PARA 322. As to the meaning of 'unit-holder' see PARA 331.
- 20 Commonhold and Leasehold Reform Act 2002 s 41(7)(a).
- 21 As to the meaning of 'registered' see PARA 309 note 10.
- 22 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.
- 23 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.
- 24 Commonhold and Leasehold Reform Act 2002 s 41(7)(b).
- 25 As to the meaning of 'the registrar' see PARA 309 note 13.
- 26 Commonhold and Leasehold Reform Act 2002 s 41(7)(c).
- 27 As to the rights and duties conferred and imposed by the commonhold community statement see PARA 311. Where the Commonhold and Leasehold Reform Act 2002 s 7 (see PARA 322) and s 9 (see PARA 324) have effect following an application to add land, the references in s 7(2)(b) (see PARA 322 head (2)), s 7(3)(c) (see

PARA 322 head (c)) and s 9(3)(e) (see PARA 324 head (e)) to the rights and duties conferred and imposed by the commonhold community statement are treated as references to rights and duties only in so far as they affect the added land: s 41(6)(b).

28 Commonhold and Leasehold Reform Act 2002 41(7)(d).

29 For the prescribed fee for an application to add land to a commonhold see the Land Registration Fee Order 2009, SI 2009/845, Sch 3 Pt 1 para (15).

30 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 20(3).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2.
 ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/326.
 Registration of amended commonhold community statement.

326. Registration of amended commonhold community statement.

An amendment of a commonhold community statement¹ has no effect unless and until the amended statement is registered² in accordance with the following provisions³.

If the commonhold association⁴ makes an application⁵, the registrar⁶ must arrange for an amended commonhold community statement to be kept in his custody, and referred to in the register⁷, in place of the unamended statement⁸. Such an application must be accompanied by a certificate given by the directors⁹ of the commonhold association that the amended commonhold community statement satisfies the requirements¹⁰.

Where the registrar amends the register on such an application he must make any consequential amendments to the register which he thinks appropriate¹¹. On completion of the application, the registrar must enter a note of the amended commonhold community statement in the register of the title to the common parts in a manner that distinguishes it from previous versions of the commonhold community statement¹².

1 As to amendment of a commonhold community statement see PARA 313; and as to the commonhold community statement see PARA 311.

2 As to the meaning of 'registered' see PARA 309 note 10.

3 Commonhold and Leasehold Reform Act 2002 s 33(3).

4 As to the meaning of 'commonhold association' see PARA 305.

5 I.e. an application under the Commonhold and Leasehold Reform Act 2002 s 33(4): see the text and notes 6-8. An application to register an amended commonhold community statement must be made in the prescribed form: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 13(1). For the prescribed form see Sch 1, Form CM3. The application must be accompanied by a new version of the commonhold community statement incorporating the amendments: r 13(2). For the prescribed fee for such an application see the Land Registration Fee Order 2009, SI 2009/845, Sch 3 Pt 1 paras (18), (19).

6 As to the meaning of 'the registrar' see PARA 309 note 13.

7 As to the meaning of 'the register' see PARA 309 note 10.

8 Commonhold and Leasehold Reform Act 2002 s 33(4). Where an amendment of a commonhold community statement redefines the extent of a commonhold unit, the application under s 33(4) must be accompanied by any consent required by s 23(1) or s 24(2) (or an order of a court dispensing with consent) (see PARA 352): s 33(6). Where an amendment of a commonhold community statement has the effect of changing the extent of the common parts, the application under s 33(4) must be accompanied by any consent required by s 30(2) (or an order of a court dispensing with consent) (see PARA 334): s 33(7). As to the meaning of 'court' see PARA 301 note 17; as to the meaning of 'commonhold unit' see PARA 330; and as to the meaning of 'common parts' see PARA 332.

9 As to the appointment and removal of directors see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.

10 Commonhold and Leasehold Reform Act 2002 s 33(5). The requirements referred to in the text are those of Pt 1 (ss 1-70).

11 Commonhold and Leasehold Reform Act 2002 s 33(8).

12 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 13(3).

UPDATE

326 Registration of amended commonhold community statement

NOTE 5--SI 2004/1830 Sch 1, Form CM3 amended: SI 2009/2024.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/327. Rejection or cancellation of application for registration in relation to commonhold land.

327. Rejection or cancellation of application for registration in relation to commonhold land.

If an application for registration is not in order, the registrar¹ may raise such requisitions as he considers necessary, specifying a period (being not less than 20 business days²) within which the applicant must comply with the requisitions³. If the applicant fails to comply with the requisitions within that period, the registrar may cancel the application or may extend the period when this appears to him to be reasonable in the circumstances⁴.

If an application appears to the registrar to be substantially defective, he may reject it on delivery or he may cancel it at any time thereafter⁵.

Where a fee for an application⁶ is paid by means of a cheque and the registrar becomes aware, before that application has been completed, that the cheque has not been honoured, the application may be cancelled⁷.

In addition to the registrar's powers under the above provisions⁸, he may reject an application on delivery or he may cancel it at any time thereafter if plans submitted with it, whether as part of the commonhold community statement⁹ or otherwise, are insufficiently clear or accurate¹⁰.

1 le the Chief Land Registrar: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1066.

2 'Business day' means a day when the land registry is open to the public under the Land Registration Rules 2003, SI 2003/1417, r 216 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1065): r 217(1).

3 Land Registration Rules 2003, SI 2003/1417, r 16(1).

4 Land Registration Rules 2003, SI 2003/1417, r 16(2).

5 Land Registration Rules 2003, SI 2003/1417, r 16(3).

6 As to land registry fees see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1071.

7 Land Registration Rules 2003, SI 2003/1417, r 16(4).

8 le the registrar's powers under the Land Registration Rules 2003, SI 2003/1417, r 16: see the text and notes 1-7.

9 As to the commonhold community statement see PARAS 311, 312.

10 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 8.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(2) REGISTRATION/(i) Procedure for Registration/328. Completion of registration in relation to commonhold land.

328. Completion of registration in relation to commonhold land.

When satisfied that an application for registration of a freehold estate in land¹ as a freehold estate in commonhold land² is in order³, the registrar⁴ must complete it by entering in the individual register of the affected registered titles:

- 153 (1) a note that the freehold estate is registered as a freehold estate in commonhold land;
- 154 (2) a note of the memorandum and articles of association of the commonhold association⁵ and the commonhold community statement⁶;
- 155 (3) where the application is made at a time when the proposed unit-holders are not identified⁷, a note that the rights and duties conferred and imposed by the commonhold community statement will not come into force until the end of the transitional period⁸; and
- 156 (4) where the application is made at a time when the proposed unit-holders are identified⁹, the applicant as proprietor of the registered title to each of the units and as proprietor of the registered title to the common parts¹⁰.

Where an application to register the freehold estate in land as the freehold estate in commonhold land is made at a time when the proposed unit-holders are identified¹¹, the registrar must cancel notice of any lease extinguished under the relevant statutory provision¹², and must close the title if the lease is registered¹³.

To give effect to the terms of Part 1 of the Commonhold and Leasehold Reform Act 2002¹⁴, the registrar must enter a restriction in the prescribed form¹⁵ in the individual register of the common parts title, and enter a restriction in the prescribed form¹⁶ in the individual register of each unit title¹⁷.

1 As to the meaning of 'land' see PARA 301 note 2. As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq. As to the registration of land generally see **LAND REGISTRATION**; and as to the application of land registration rules see PARA 319.

2 I.e. an application under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320. As to the meaning of 'commonhold land' see PARA 302.

3 As to the registrar's powers when the application is not in order see PARA 327.

4 As to the meaning of 'the registrar' see PARA 309 note 13.

5 As to the commonhold association see PARA 305; and as to the memorandum and articles of association of the commonhold association see PARAS 306-309.

6 As to the commonhold community statement see PARAS 311, 312.

7 I.e. where the application is not accompanied by the form prescribed by the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form COV. As to registration where the proposed unit-holders are not identified see PARA 322.

8 As to the transitional period see PARA 323.

9 le where the application is accompanied by the form prescribed by the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form COV. As to registration where the proposed unit-holders are identified see PARA 324.

10 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 28(1).

11 See note 9.

12 le any lease extinguished under the Commonhold and Leasehold Reform Act 2002 s 9(3)(f): see PARA 324.

13 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 28(2).

14 le the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70).

15 For the prescribed form see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 2, Form CA. That form prescribes the following wording: 'No charge by the proprietor of the registered estate is to be registered other than a legal mortgage which is accompanied by a certificate by a conveyancer or a director or secretary of the commonhold association that the creation of the mortgage was approved by a resolution complying with the Commonhold and Leasehold Reform Act 2002 s 29(2)'. As to s 29(2) see PARA 332.

16 For the prescribed form see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 2, Form CB. That form prescribes the following wording: 'No disposition by the proprietor of the registered estate (other than a transfer or charge of the whole of the land in the title) is to be registered without a certificate by a conveyancer or a director or secretary of the commonhold association that the disposition is authorised by and made in accordance with the provisions of the Commonhold and Leasehold Reform Act 2002'.

17 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 27.

UPDATE

328 Completion of registration in relation to commonhold land

TEXT AND NOTES 1-10--SI 2004/1830 r 28(1) amended: SI 2009/2024.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/2. ESTABLISHING COMMONHOLD/(2) REGISTRATION/ (ii) Consequences of Registration of Commonhold Land/329. Liability in relation to extinguished leases.

(ii) Consequences of Registration of Commonhold Land

329. Liability in relation to extinguished leases.

Where a lease is extinguished¹, and the consent of the holder of that lease was not among the consents required² in respect of the application³ for the land⁴ to become commonhold land⁵, the following provisions apply⁶.

If the holder of a lease superior to the extinguished lease gave consent⁷, he is liable for loss suffered by the holder of the extinguished lease⁸.

If the holders of a number of leases would be so liable⁹, liability attaches only to the person¹⁰ whose lease was most proximate to the extinguished lease¹¹.

If no person is so liable¹², the person who gave consent¹³ as the holder of the freehold estate¹⁴ out of which the extinguished lease was granted¹⁵ is liable for loss suffered by the holder of the extinguished lease¹⁶.

1 Commonhold and Leasehold Reform Act 2002 s 10(1)(a). A lease may be extinguished by virtue of either s 7(3)(d) (see PARA 322 head (d)) or s 9(3)(f) (see PARA 324 head (f)). As to the meaning of 'lease' for the purposes of s 7(3)(d) see s 7(4); and PARA 322 note 25; and as to the meaning of 'lease' for the purposes of s 9(3)(f) see s 9(4); and PARA 324 note 25.

2 Ie the consents required by the Commonhold and Leasehold Reform Act 2002 s 3: see PARA 314.

3 Ie the application for registration made under the Commonhold and Leasehold Reform Act 2002 s 2: see PARA 320.

4 As to the meaning of 'land' see PARA 301 note 2.

5 Commonhold and Leasehold Reform Act 2002 s 10(1)(b). As to the meaning of 'commonhold land' see PARA 302.

6 Commonhold and Leasehold Reform Act 2002 s 10(1).

7 Ie under the Commonhold and Leasehold Reform Act 2002 s 3: see PARA 314.

8 Commonhold and Leasehold Reform Act 2002 s 10(2).

9 Ie under the Commonhold and Leasehold Reform Act 2002 s 10(2): see the text and notes 7-8.

10 As to the meaning of 'person' see PARA 301 note 20.

11 Commonhold and Leasehold Reform Act 2002 s 10(3).

12 See note 9.

13 Ie under the Commonhold and Leasehold Reform Act 2002 s 3: see PARA 314.

14 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

15 As to the granting of leases out of a registered freehold estate see **LAND REGISTRATION**. See also **SALE OF LAND**.

16 Commonhold and Leasehold Reform Act 2002 s 10(4).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/3. THE DIVISION OF COMMONHOLD/(1) THE COMMONHOLD UNIT/330. The commonhold unit.

3. THE DIVISION OF COMMONHOLD

(1) THE COMMONHOLD UNIT

330. The commonhold unit.

A 'commonhold unit' means a commonhold unit specified in a commonhold community statement¹ in accordance with the following provisions².

A commonhold community statement must:

- 157 (1) specify at least two parcels of land³ as commonhold units⁴; and
- 158 (2) define the extent of each commonhold unit⁵.

In defining the extent of a commonhold unit, a commonhold community statement:

- 159 (a) must refer to a plan⁶ which is included in the statement and which complies with prescribed⁷ requirements⁸;
- 160 (b) may refer to an area subject to the exclusion of specified structures, fittings, apparatus or appurtenances within the area⁹;
- 161 (c) may exclude the structures which delineate an area referred to¹⁰; and
- 162 (d) may refer to two or more areas (whether or not contiguous)¹¹.

In defining the extent of a commonhold unit a commonhold community statement:

- 163 (i) may exclude, from the definition, the structure and exterior¹² of a self-contained building¹³, or of a self-contained part of a building¹⁴, which only contains one commonhold unit or part of one commonhold unit; and
- 164 (ii) must exclude, from the definition, the structure and exterior of a self-contained building, or of a self-contained part of a building, in any other case¹⁵.

A commonhold unit need not contain all or any part of a building¹⁶.

1 As to the meaning of 'commonhold community statement' see PARA 311. A commonhold community statement may require the directors of the commonhold association to establish and maintain one or more funds to finance the repair and maintenance of commonhold units: see PARA 338. As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq; and as to the meaning of 'commonhold association' see PARA 305.

2 Commonhold and Leasehold Reform Act 2002 ss 1(3), 11(1). As to transactions involving commonhold units see PARAS 342-353.

Premises which are a commonhold unit of which a person is a unit-holder are to be treated as premises which are let to that person for the purposes of the Disability Discrimination Act 1995 ss 24A-24F (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 604 et seq): Disability Discrimination (Premises) Regulations 2006, SI 2006/887, reg 9(1). Where reg 9(1) applies: (1) a commonhold association which exercises functions in relation to the premises is to be treated as a person who manages the premises; (2) for the purposes of the Disability Discrimination Act 1995 ss 24D, 24E (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 605), any reference to a term of the letting is to be treated as including a reference to (a) a term of the commonhold community statement; and (b) any other term applicable by virtue of the transfer of the unit to the unit-holder; (3) for the purposes of ss 24C(4), 24D(1) (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 605), any benefit or facility

which, by reason of the letting, is one of which a relevant disabled person is entitled to make use, is to be treated as including any benefit or facility which by reason of any term referred to in head (2)(a) or (b) above, is one of which a relevant disabled person is entitled to make use; (4) a person who is lawfully an occupier of the unit, although not a unit-holder nor a person lawfully occupying the unit under a letting of it, is to be treated as a person who, although not a person to whom the premises are let, is lawfully under a letting an occupier of them: Disability Discrimination (Premises) Regulations 2006, SI 2006/887, reg 9(2).

3 As to the meaning of 'land' see PARA 301 note 2.

4 Commonhold and Leasehold Reform Act 2002 s 11(2)(a); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.4.1, cited in PARA 312. It would make a nonsense of commonhold, which presupposes a community of interests (see PARA 301 note 3), to apply to developments consisting of fewer than two parcels of land.

5 Commonhold and Leasehold Reform Act 2002 s 11(2)(b); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.4.2, cited in PARA 312. As to changing the size of a unit see PARA 352.

6 As to the plans which must be incorporated in the commonhold community statement see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 2.2.1, cited in PARA 312.

7 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12.

8 Commonhold and Leasehold Reform Act 2002 s 11(3)(a). A plan referred to in a commonhold community statement for the purposes of defining the extent of a commonhold unit must delineate the boundaries of the commonhold unit with any adjoining property: Commonhold Regulations 2004, SI 2004/1829, reg 8.

9 Commonhold and Leasehold Reform Act 2002 s 11(3)(b).

10 Commonhold and Leasehold Reform Act 2002 s 11(3)(c).

11 Commonhold and Leasehold Reform Act 2002 s 11(3)(d). As to multiple site commonholds see PARA 303.

For the purposes of an application under s 2 (see PARA 320) made jointly by two or more persons, each of whom is the registered freeholder of part of the land to which the application relates ('a part site') s 11 is modified so that, in addition to complying with the requirements in s 11(3), in defining the extent of a commonhold unit, the commonhold community statement must provide for the extent of each commonhold unit to be situated wholly upon one part site, and not situated partly on one part site and partly on one or more other part sites: Commonhold Regulations 2004, SI 2004/1829, reg 7.

12 For these purposes, 'structure and exterior' includes the relevant services in or to the building but does not include those which are within and exclusively to one commonhold unit; and 'relevant services' are services provided by the means of pipes, cables or other fixed installations: Commonhold Regulations 2004, SI 2004/1829, reg 9(2).

13 For these purposes, 'self-contained building' means a building which is structurally detached: Commonhold Regulations 2004, SI 2004/1829, reg 9(2).

14 For these purposes, 'self-contained part of a building' means a part of a building (1) which constitutes a vertical division of the building; (2) the structure of which is such that it could be redeveloped independently of the rest of the building; and (3) in relation to which the relevant services provided for occupiers are provided independently of the relevant services provided for the occupiers of the rest of the building, or could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building: Commonhold Regulations 2004, SI 2004/1829, reg 9(2).

15 Commonhold Regulations 2004, SI 2004/1829, reg 9(1). Where, by virtue of reg 9(1)(b) (see head (ii) in the text), in defining the extent of a commonhold unit, the commonhold community statement excludes the structure and exterior of a self-contained building, or of a self-contained part of a building, the commonhold community statement is treated as including provision which imposes a duty on the commonhold association to insure the whole of the self-contained building, or self-contained part of the building: reg 15(7). As to the duty to insure the common parts see PARA 332; and as to insurance of the commonhold units see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.4.6, cited in PARA 312.

16 Commonhold and Leasehold Reform Act 2002 s 11(4).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/3. THE DIVISION OF COMMONHOLD/(1) THE COMMONHOLD UNIT/331. The unit-holder of a commonhold unit.

331. The unit-holder of a commonhold unit.

A person¹ is the 'unit-holder' of a commonhold unit² if he is entitled to be registered³ as the proprietor⁴ of the freehold estate⁵ in the unit (whether or not he is registered)⁶.

Two or more persons are joint unit-holders of a commonhold unit if they are entitled to be registered as proprietors of the freehold estate in the unit (whether or not they are registered)⁷.

Regulations under Part 1 of the Commonhold and Leasehold Reform Act 2002 which refer to a unit-holder must make provision for the construction of the reference in the case of joint unit-holders⁸. Regulations may also make provision for the construction in the case of joint unit-holders of a reference:

- 165 (1) in an enactment⁹;
- 166 (2) in a commonhold community statement¹⁰;
- 167 (3) in the memorandum or articles of association of a commonhold association¹¹;
- or
- 168 (4) in another document¹²,

to a unit-holder¹³.

1 As to the meaning of 'person' see PARA 301 note 20.

2 As to the meaning of 'commonhold unit' see PARA 330.

3 As to the meaning of 'registered' see PARA 309 note 10.

4 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**. As to the meaning of 'land' see PARA 301 note 2.

5 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

6 Commonhold and Leasehold Reform Act 2002 ss 1(3), 12. This provision ensures that from the moment that the transfer or sale of a unit is completed (and before that sale or transfer is registered) the new owner is the person entitled to be registered as the unit-holder in place of the previous owner.

7 Commonhold and Leasehold Reform Act 2002 s 13(1).

In the application of the following provisions to a unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together (ie the rights and responsibilities which form the subject-matter of these provisions are joint):

- 59 (1) s 15(1) (see PARA 342) (s 13(2)(b) (amended by SI 2004/1829);
- 60 (2) the Commonhold and Leasehold Reform Act 2002 s 20(1) (see PARA 348) (s 13(2)(d));
- 61 (3) s 23(1) (see PARA 352) (s 13(2)(e));
- 62 (4) s 35(1)(b) (see PARA 335) (s 13(2)(f));
- 63 (5) s 47(2) (see PARA 356) (s 13(2)(i));
- 64 (6) the Commonhold Regulations 2004, SI 2004/1829, reg 10(2) (see PARA 352), reg 18(2)(a), (3) (see PARA 318) (reg 2(1)(a));
- 65 (7) Sch 3 paras 4.8.5-4.8.9 (see PARA 313) (reg 2(1)(b)).

In the application of the following provisions to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together (ie the rights and responsibilities which form the subject-matter of these provisions are both joint and individual):

- 66 (a) the Commonhold and Leasehold Reform Act 2002 s 1(1)(c) (see PARA 302) (s 13(3)(a));
- 67 (b) s 14(3) (see PARA 311) (s 13(3)(aa) (s 13(3) (aa), (ab), (ba), (fa), (fb) added by SI 2004/1829));
- 68 (c) the Commonhold and Leasehold Reform Act 2002 s 15(3) (see PARA 342) (s 13(3)(ab) (as so added));
- 69 (d) s 16 (see PARA 343) (s 13(3)(b));
- 70 (e) s 19(2), (3) (see PARA 344) (s 13(3)(ba) (as so added));
- 71 (f) s 31(1)(b), (3)(b), (5)(j), (7) (see PARA 311) (s 13(3)(c));
- 72 (g) s 32(4)(a), (c) (see PARA 311) (s 13(3)(d));
- 73 (h) s 35(1)(a), (2), (3) (see PARA 335) (s 13(3)(e));
- 74 (i) s 37(2) (see PARA 337) (s 13(3)(f));
- 75 (j) s 38(1) (see PARA 338) (s 13(3)(fa) (as so added));
- 76 (k) s 39(2) (see PARA 338) (s 13(3)(fb) (as so added));
- 77 (l) s 40(1) (see PARA 340) (s 13(3)(g));
- 78 (m) s 58(3)(a) (see PARA 317) (s 13(3)(h));
- 79 (n) the Commonhold Regulations 2004, SI 2004/1829, reg 11(1) (see PARA 344), reg 18(2)(b) (see PARA 318) (reg 2(2)(a));
- 80 (o) Sch 2 arts 4(d), 75 (see PARA 308) (reg 2(2)(b));
- 81 (p) all provisions in Sch 3 (see PARAS 312, 313, 332, 334, 336-339, 341, 342-344, 346, 347) except Sch 3 paras 4.8.5-4.8.9 (reg 2(2)(c)).

Regulations may amend the Commonhold and Leasehold Reform Act 2002 s 13(2), (3): s 13(5); and see the Commonhold Regulations 2004, SI 2004/1829, reg 2(3), (4); and heads (1), (b), (c), (e), (j), (k) above.

8 Commonhold and Leasehold Reform Act 2002 s 13(4); and see the Commonhold Regulations 2004, SI 2004/1829, reg 2(1), (2); and note 7 heads (6), (7), (n)-(p).

9 Commonhold and Leasehold Reform Act 2002 s 13(6)(a).

10 Commonhold and Leasehold Reform Act 2002 s 13(6)(b); and see note 7 heads (7), (p). As to the meaning of 'commonhold community statement' see PARA 311.

11 Commonhold and Leasehold Reform Act 2002 s 13(6)(c); and see note 7 head (o). As to the memorandum or articles of association of a commonhold association see PARAS 306-308; and as to the meaning of 'commonhold association' see PARA 305.

12 Commonhold and Leasehold Reform Act 2002 s 13(6)(d).

13 Commonhold and Leasehold Reform Act 2002 s 13(6).

UPDATE

331 The unit-holder of a commonhold unit

TEXT AND NOTE 11--Commonhold and Leasehold Reform Act 2002 s 13(6)(c) amended: SI 2009/1941.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/3. THE DIVISION OF COMMONHOLD/(2) THE COMMON PARTS/332. Common parts in relation to commonhold land.

(2) THE COMMON PARTS

332. Common parts in relation to commonhold land.

'Common parts', in relation to a commonhold¹, means every part of the commonhold which is not for the time being a commonhold unit² in accordance with the commonhold community statement³.

A commonhold community statement must make provision⁴:

- 169 (1) regulating the use of the common parts⁵;
- 170 (2) requiring the commonhold association⁶ to insure the common parts⁷; and
- 171 (3) requiring the commonhold association to repair and maintain the common parts⁸.

Nothing in a commonhold community statement must prevent or restrict⁹:

- 172 (a) the transfer by the commonhold association of its freehold estate¹⁰ in any part of the common parts¹¹; or
- 173 (b) the creation by the commonhold association of an interest¹² in any part of the common parts¹³.

It is not possible to create a charge over common parts¹⁴; and any instrument¹⁵ or agreement is of no effect to the extent that it purports to create a charge over common parts¹⁶. However, this prohibition¹⁷ does not apply in relation to a legal mortgage¹⁸ if the creation of the mortgage is approved by a resolution of the commonhold association¹⁹. For this purpose, a resolution must be passed before the mortgage is created²⁰, and unanimously²¹. To give effect to the terms of Part 1 of the Commonhold and Leasehold Reform Act 2002²², the registrar must enter a restriction in the prescribed form²³ in the individual register of the common parts title²⁴.

1 As to the meaning of 'a commonhold' see PARA 302 note 8.

2 As to the meaning of 'commonhold unit' see PARA 330.

3 Commonhold and Leasehold Reform Act 2002 ss 1(3), 25(1). As to the meaning of 'commonhold community statement' see PARA 311. As to additions to the common parts see PARA 334.

4 Commonhold and Leasehold Reform Act 2002 s 26.

5 Commonhold and Leasehold Reform Act 2002 s 26(a). As to use of the common parts see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.3.2, cited in PARA 312.

6 As to the meaning of 'commonhold association' see PARA 305.

7 Commonhold and Leasehold Reform Act 2002 s 26(b). For the purposes of Pt 1 (ss 1-70), a reference to a duty to insure includes a reference to a duty to use the proceeds of insurance for the purpose of rebuilding or reinstating: s 69(2)(a).

The commonhold association must insure the common parts to their full rebuilding and reinstatement costs against loss or damage by fire and such other risks as are specified in the Commonhold Regulations 2004, SI 2004/1829, Sch 3, Annex 4 para 5 (local rules): Sch 3 para 4.4.1. The commonhold association must use the

proceeds of any insurance so taken out for the purpose of rebuilding or reinstating the common parts (Sch 3 para 4.4.2); and must keep details of common parts insurance and evidence of payment of the most recent premium at its registered office or such other place as the directors think fit (Sch 3 para 4.4.3). A unit-holder may, on reasonable notice and at a reasonable time and place, inspect the common parts insurance policy taken out by the commonhold association and may also, upon payment of the commonhold association's reasonable charges, require the commonhold association to provide a copy of the insurance policy: Sch 3 para 4.4.4. If a request is made by a unit-holder to provide a copy of the common parts insurance policy, the commonhold association must provide the copy to the unit-holder as soon as reasonably practicable upon payment of the charge: Sch 3 para 4.4.5.

8 Commonhold and Leasehold Reform Act 2002 s 26(c). For the purposes of Pt 1, a reference to maintaining property includes a reference to decorating it and to putting it into sound condition: s 69(2)(b); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.5.1. The duties imposed by the commonhold community statement in respect of the repair and maintenance of the commonhold units are specified in Sch 3, Annex 4 para 7 (local rules): Sch 3 para 4.5.2. A commonhold community statement may require the directors of the commonhold association to establish and maintain one or more funds to finance the repair and maintenance of common parts: see PARA 338.

9 Commonhold and Leasehold Reform Act 2002 s 27(1).

10 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

11 Commonhold and Leasehold Reform Act 2002 s 27(1)(a). An application to register a transfer of the freehold estate in part of the common parts must be accompanied by an application in the prescribed form to register the commonhold community statement that has been amended in relation to the transfer: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 16(1). For the prescribed form see Sch 1, Form CM3. The registrar may reject on delivery the application to register the transfer, or he may cancel it at any time thereafter, if it is not accompanied by an application to register the amended commonhold community statement: r 16(2). An application to register an amended commonhold community statement in Form CM3 which would have the effect of altering the extent of the common parts (unless the Commonhold and Leasehold Reform Act 2002 s 30(4) applies: see PARA 334) must be accompanied by an application to register any relevant transfer: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 18(1). Where there is a relevant transfer, the registrar may reject on delivery the application to register the amended commonhold community statement, or he may cancel it at any time thereafter, if r 18(1) is not complied with: r 18(2).

12 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 27, 'interest' does not include either a charge or an interest which arises by virtue of a charge: s 27(2).

13 Commonhold and Leasehold Reform Act 2002 s 27(1)(b).

14 Commonhold and Leasehold Reform Act 2002 s 28(1). Where by virtue of s 7 (see PARA 322) or s 9 (see PARA 324) a commonhold association is registered as the proprietor of common parts, a charge which relates wholly or partly to the common parts is extinguished to the extent that it relates to the common parts: s 28(3). Where by virtue of s 30 (see PARA 334) land vests in a commonhold association following an amendment to a commonhold community statement which has the effect of adding land to the common parts, a charge which relates wholly or partly to the land added is extinguished by virtue of this provision to the extent that it relates to that land: s 28(4). As to the meaning of 'registered' see PARA 309 note 10. As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**. As to the meaning of 'land' see PARA 301 note 2.

Where a charge is extinguished, in whole or in part, under s 28(3) or s 28(4), the registrar must cancel or alter as appropriate any entry of the charge in the register to the extent that it is extinguished: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 32.

15 'Instrument' includes any document: Commonhold and Leasehold Reform Act 2002 s 69(1).

16 Commonhold and Leasehold Reform Act 2002 s 28(2).

17 Ie the prohibition contained in the Commonhold and Leasehold Reform Act 2002 s 28: see the text and notes 14-16.

18 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 29, 'legal mortgage' has the meaning given by the Law of Property Act 1925 s 205(1)(xvi) (see **MORTGAGE** vol 77 (2010) PARA 104): Commonhold and Leasehold Reform Act 2002 s 29(3).

19 Commonhold and Leasehold Reform Act 2002 ss 28(5), 29(1). As to the passing of a resolution by a commonhold association see PARA 336.

20 Commonhold and Leasehold Reform Act 2002 s 29(2)(a).

21 Commonhold and Leasehold Reform Act 2002 s 29(2)(b). A resolution is passed unanimously if every member who casts a vote votes in favour: see s 36(4); and PARA 336.

22 See the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70).

23 For the prescribed form see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 2, Form CA; and PARA 328 note 15.

24 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 27.

UPDATE

332 Common parts in relation to commonhold land

NOTE 11--SI 2004/1830 Sch 1, Form CM3 amended: SI 2009/2024.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/3. THE DIVISION OF COMMONHOLD/(2) THE COMMON PARTS/333. Limited use areas of common parts of commonhold land.

333. Limited use areas of common parts of commonhold land.

A commonhold community statement¹ may make provision in respect of a specified part of the common parts² (a 'limited use area') restricting the classes of person³ who may use it⁴, and the kind of use to which it may be put⁵. A commonhold community statement may also make provision which has effect only in relation to a limited use area⁶, and may make different provision for different limited use areas⁷.

1 As to the meaning of 'commonhold community statement' see PARA 311.

2 As to the meaning of 'common parts' see PARA 332.

3 As to the meaning of 'person' see PARA 301 note 20.

4 Commonhold and Leasehold Reform Act 2002 s 25(2)(a).

5 Commonhold and Leasehold Reform Act 2002 s 25(2)(b). A limited use area may be useful eg in relation to parking spaces. As to use of the common parts see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.3.2, cited in PARA 312; and as to limited use areas see Sch 3, Annex 4 para 4 (local rules).

6 Commonhold and Leasehold Reform Act 2002 s 25(3)(a).

7 Commonhold and Leasehold Reform Act 2002 s 25(3)(b).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/3. THE DIVISION OF COMMONHOLD/(2) THE COMMON PARTS/334. Additions to common parts of commonhold land.

334. Additions to common parts of commonhold land.

Where an amendment of a commonhold community statement¹:

- 174 (1) specifies land² which forms part of a commonhold unit³; and
- 175 (2) provides for that land (the 'added land') to be added to the common parts⁴,

the following provisions apply⁵.

The amendment may not be made unless the registered⁶ proprietor⁷ of any charge⁸ over the added land consents in writing⁹, and before the amendment is made¹⁰.

On the filing of the amended statement¹¹:

- 176 (a) the commonhold association is entitled to be registered as the proprietor of the freehold estate¹² in the added land¹³; and
- 177 (b) the registrar¹⁴ must so register the commonhold association¹⁵ (without an application being made)¹⁶.

1 As to the meaning of 'commonhold community statement' see PARA 311.

2 As to the meaning of 'land' see PARA 301 note 2.

3 Commonhold and Leasehold Reform Act 2002 s 30(1)(a). As to the meaning of 'commonhold unit' see PARA 330.

4 Commonhold and Leasehold Reform Act 2002 s 30(1)(b). As to the meaning of 'common parts' see PARA 332.

5 Commonhold and Leasehold Reform Act 2002 s 30(1). The commonhold association must not make any alterations to the common parts or cause or permit the common parts to be altered unless the proposed alteration is approved by ordinary resolution: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.6.1. As to the meaning of 'ordinary resolution' see PARA 313 note 6.

6 As to the meaning of 'registered' see PARA 309 note 10.

7 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.

8 As to charges over commonhold units see PARAS 348, 351.

9 Commonhold and Leasehold Reform Act 2002 s 30(2)(a). As to the meaning of 'writing' see PARA 310 note 22.

10 Commonhold and Leasehold Reform Act 2002 s 30(2)(b). Regulations may enable a court to dispense with the requirement for consent on the application of a commonhold association in specified circumstances: s 30(3). As to the meaning of 'court' see PARA 301 note 17; and as to the meaning of 'commonhold association' see PARA 305. As to the making of regulations under Pt 1 (ss 1-70) generally see PARA 301 note 12. At the date at which this volume states the law, no regulations had been made for the purposes of s 30(3).

11 As to filing an amendment see the Commonhold and Leasehold Reform Act 2002 s 33; and PARA 326.

12 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

13 Commonhold and Leasehold Reform Act 2002 s 30(4)(a). A charge which relates wholly or partly to the land added is extinguished by virtue of s 28(4) to the extent that it relates to that land: see PARA 332 note 14.

14 As to the meaning of 'the registrar' see PARA 309 note 13.

15 Ie the commonhold association must be registered in accordance with the Commonhold and Leasehold Reform Act 2002 s 30(4)(a): see head (a) in the text.

16 Commonhold and Leasehold Reform Act 2002 s 30(4)(b).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/4. THE OPERATION OF COMMONHOLD/335. Management duties of commonhold association's directors.

4. THE OPERATION OF COMMONHOLD

335. Management duties of commonhold association's directors.

The directors¹ of a commonhold association² must exercise their powers³ so as to permit or facilitate so far as possible⁴:

- 178 (1) the exercise by each unit-holder⁵ of his rights⁶; and
- 179 (2) the enjoyment by each unit-holder of the freehold estate in his unit⁷.

The directors of a commonhold association must, in particular, use any right, power or procedure conferred or created⁸ for the purpose of preventing, remedying or curtailing a failure on the part of a unit-holder to comply with a requirement or duty imposed on him by virtue of a provision of Part 1 of the Commonhold and Leasehold Reform Act 2002⁹ or of the commonhold community statement¹⁰.

However, in respect of a particular failure on the part of a unit-holder (the 'defaulter') the directors of a commonhold association:

- 180 (a) need not take action if they reasonably think that inaction is in the best interests of establishing or maintaining harmonious relationships between all the unit-holders, and that it will not cause any unit-holder (other than the defaulter) significant loss or significant disadvantage¹¹; and
- 181 (b) must have regard to the desirability of using arbitration, mediation or conciliation procedures¹² instead of legal proceedings wherever possible¹³.

1 As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.

2 As to the meaning of 'commonhold association' see PARA 305.

3 As to the powers and duties of the directors of the commonhold association see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 50-53.

4 Commonhold and Leasehold Reform Act 2002 s 35(1).

5 As to the meaning of 'unit-holder' see PARA 331. A reference in the Commonhold and Leasehold Reform Act 2002 s 35 to a unit-holder includes a reference to a tenant of a unit (s 35(4)); and a reference to a tenant includes a reference to a person who has home rights (within the meaning of the Family Law Act 1996 s 30(2) (rights in respect of matrimonial or civil partnership home: see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 285; and see **LAND CHARGES; LAND REGISTRATION**)) in respect of a commonhold unit: Commonhold and Leasehold Reform Act 2002 s 61(b) (amended by the Civil Partnership Act 2004 Sch 9 Pt 2 para 24(1)-(3)). As to the meaning of 'commonhold unit' see PARA 330.

6 Commonhold and Leasehold Reform Act 2002 s 35(1)(a). In the application of s 35(1)(a) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(e). As to the meaning of 'joint unit-holder', and as to the rights of a unit-holder, see PARA 331.

7 Commonhold and Leasehold Reform Act 2002 s 35(1)(b). In the application of s 35(1)(b) to a unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: s 13(2)(f). As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

8 le any right, power or procedure conferred or created by virtue of the Commonhold and Leasehold Reform Act 2002 s 37: see PARA 337.

9 le the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70): see PARAS 301 et seq, 336 et seq.

10 Commonhold and Leasehold Reform Act 2002 s 35(2). In the application of s 35(2) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(e). As to the meaning of 'commonhold community statement' see PARA 311.

11 Commonhold and Leasehold Reform Act 2002 s 35(3)(a). In the application of s 35(3) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(e).

12 These procedures include referral under a scheme approved under the Commonhold and Leasehold Reform Act 2002 s 42: see PARA 341.

13 Commonhold and Leasehold Reform Act 2002 s 35(3)(b); and see note 11.

UPDATE

335 Management duties of commonhold association's directors

NOTE 3--SI 2004/1829 Sch 2 substituted: SI 2009/2363.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/4. THE OPERATION OF COMMONHOLD/336. Voting in relation to commonhold association.

336. Voting in relation to commonhold association.

In relation to any provision of Part 1 of the Commonhold and Leasehold Reform Act 2002¹ which refers to the passing of a resolution by a commonhold association² (a 'voting provision'), the following provisions apply³.

A voting provision is satisfied only if every member⁴ is given an opportunity to vote in accordance with any relevant provision of the memorandum or articles of association⁵ or the commonhold community statement⁶.

A vote is cast for the purposes of a voting provision whether it is cast in person or in accordance with a provision which:

- 182 (1) provides for voting by post, by proxy or in some other manner⁷; and
- 183 (2) is contained in the memorandum or articles of association or the commonhold community statement⁸.

A resolution is passed unanimously if every member who casts a vote votes in favour⁹.

1 le the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70).

2 As to the meaning of 'commonhold association' see PARA 305.

3 Commonhold and Leasehold Reform Act 2002 s 36(1).

4 As to membership of the commonhold association see PARA 310.

5 As to the memorandum and articles of association of the commonhold association see PARAS 306-308; and as to the prescribed provision with regard to members' votes see the Commonhold Regulations 2004, SI 2004/1829, Sch 2 arts 27-37.

6 Commonhold and Leasehold Reform Act 2002 s 36(2). As to the meaning of 'commonhold community statement' see PARA 311.

7 Commonhold and Leasehold Reform Act 2002 s 36(3)(a).

8 Commonhold and Leasehold Reform Act 2002 s 36(3)(b).

9 Commonhold and Leasehold Reform Act 2002 s 36(4); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5 ('unanimous resolution' means a resolution passed by every member as (being entitled to do so) votes in person or, if proxies are allowed, by proxy, at a general meeting of the commonhold association of which notice specifying the intention to propose the resolution as a unanimous resolution has been given in accordance with the articles of association).

The voting requirements set out in the text are varied in the case of a commonhold association passing a winding-up and termination statement resolution: see PARA 355.

UPDATE

336 Voting in relation to commonhold association

TEXT AND NOTES 5, 8--References to memorandum omitted: Commonhold and Leasehold Reform Act 2002 s 36(2), (3)(b) (amended by SI 2009/1941).

NOTE 5--SI 2004/1829 Sch 2 substituted: SI 2009/2363.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/4. THE OPERATION OF COMMONHOLD/337. The exercise and enforcement of commonhold rights or duties.

337. The exercise and enforcement of commonhold rights or duties.

Regulations may make provision (including provision conferring jurisdiction on a court¹) about the exercise or enforcement of a right or duty² imposed or conferred by or by virtue of:

- 184 (1) a commonhold community statement³;
- 185 (2) the memorandum or articles of a commonhold association⁴;
- 186 (3) a provision made by or by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002⁵.

The regulations may, in particular, make provision⁶:

- 187 (a) requiring compensation⁷ to be paid where a right is exercised in specified cases or circumstances⁸;
- 188 (b) requiring compensation to be paid where a duty is not complied with⁹;
- 189 (c) enabling recovery of costs where work is carried out for the purpose of enforcing a right or duty¹⁰;
- 190 (d) enabling recovery of costs where work is carried out in consequence of the failure to perform a duty¹¹;
- 191 (e) permitting a unit-holder¹² to enforce a duty imposed on another unit-holder, on a commonhold association or on a tenant¹³;
- 192 (f) permitting a commonhold association to enforce a duty imposed on a unit-holder or a tenant¹⁴;
- 193 (g) permitting a tenant to enforce a duty imposed on another tenant, a unit-holder or a commonhold association¹⁵;
- 194 (h) permitting the enforcement of terms or conditions to which a right is subject¹⁶;
- 195 (i) requiring the use of a specified form of arbitration, mediation or conciliation procedure before legal proceedings may be brought¹⁷.

Jurisdiction is conferred on the High Court or a county court¹⁸ to deal with the exercise or enforcement of a right conferred, or duty imposed, by or by virtue of a commonhold community statement, the Commonhold Regulations 2004¹⁹ or Part 1 of the Commonhold and Leasehold Reform Act 2002²⁰.

1 As to provisions made by or under the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70) conferring jurisdiction on a court see PARA 301 note 17.

2 A claim in respect of a right or duty of a kind referred to in the Commonhold and Leasehold Reform Act 2002 s 37(1) (see the text and notes 1, 2-5) may not be brought after the expiration of six years from the date on which the cause of action accrued: see the Limitation Act 1980 s 19A (added by the Commonhold and Leasehold Reform Act 2002 Sch 5 para 4); and **LIMITATION PERIODS** vol 68 (2008) PARA 1015.

3 Commonhold and Leasehold Reform Act 2002 s 37(1)(a).

4 Commonhold and Leasehold Reform Act 2002 s 37(1)(b). As to the memorandum and articles of association of the commonhold association see PARAS 306-308; and as to the meaning of 'commonhold association' see PARA 305.

5 Commonhold and Leasehold Reform Act 2002 s 37(1)(c).

As to the making of regulations under Pt 1 generally see PARA 301 note 12. Regulations under s 37 are subject to any provision included in a commonhold community statement in accordance with regulations made by virtue of s 32(5)(b) (see PARA 311 note 6): s 37(4). As to the meaning of 'commonhold community statement' see PARA 311.

6 Commonhold and Leasehold Reform Act 2002 s 37(2).

7 Provision about compensation made by virtue of the Commonhold and Leasehold Reform Act 2002 s 37 must include: (1) provision (which may include provision conferring jurisdiction on a court) for determining the amount of compensation (s 37(3)(a)); (2) provision for the payment of interest in the case of late payment (s 37(3)(b)).

8 Commonhold and Leasehold Reform Act 2002 s 37(2)(a).

9 Commonhold and Leasehold Reform Act 2002 s 37(2)(b).

10 Commonhold and Leasehold Reform Act 2002 s 37(2)(c).

11 Commonhold and Leasehold Reform Act 2002 s 37(2)(d).

12 As to the meaning of 'unit-holder' see PARA 331. In the application of the Commonhold and Leasehold Reform Act 2002 s 37(2) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(f). As to the meaning of 'joint unit-holder' see PARA 331.

13 Commonhold and Leasehold Reform Act 2002 s 37(2)(e). A reference to a tenant in s 37 includes a reference to a person who has home rights (within the meaning of the Family Law Act 1996 s 30(2) (matrimonial and civil partnership home rights: see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 285; and see **LAND CHARGES; LAND REGISTRATION**)) in respect of a commonhold unit: Commonhold and Leasehold Reform Act 2002 s 61(c) (amended by the Civil Partnership Act 2004 Sch 9 Pt 2 para 24(1)-(3)). As to the meaning of 'commonhold unit' see PARA 330.

As to the procedure for enforcement by a unit-holder against another unit-holder or a tenant of rights and duties that arise from the commonhold community statement or from a provision made by or by virtue of the Commonhold and Leasehold Reform Act 2002 Pt 1 see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.11.17-4.11.30; and as to the procedure for enforcement by a unit-holder of such rights and duties against the commonhold association see Sch 3 paras 4.11.2-4.11.9.

14 Commonhold and Leasehold Reform Act 2002 s 37(2)(f). As to the procedure for enforcement by the commonhold association against a unit-holder or a tenant of rights and duties that arise from the commonhold community statement or from a provision made by or by virtue of the Commonhold and Leasehold Reform Act 2002 Pt 1 see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.11.10-4.11.16. As to the directors of the commonhold association's duty to manage see PARA 335.

15 Commonhold and Leasehold Reform Act 2002 s 37(2)(g). As to the procedure for enforcement by a tenant against a unit-holder or another tenant of rights and duties that arise from the commonhold community statement or from a provision made by or by virtue of the Commonhold and Leasehold Reform Act 2002 Pt 1 see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.11.17-4.11.30; and as to the procedure for enforcement by a tenant of such rights and duties against the commonhold association see Sch 3 paras 4.11.2-4.11.9.

16 Commonhold and Leasehold Reform Act 2002 s 37(2)(h). See also the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.11.1 (in the dispute resolution procedure set out in Sch 3 paras 4.11.2-4.11.30 (see notes 13-15), references to enforcing a right include enforcing the terms and conditions to which a right is subject).

17 Commonhold and Leasehold Reform Act 2002 s 37(2)(i); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.11.2, 4.11.10, 4.11.17.

18 See the Commonhold and Leasehold Reform Act 2002 s 66(1); and see note 1.

19 See the Commonhold Regulations 2004, SI 2004/1829.

20 Commonhold Regulations 2004, SI 2004/1829, reg 17. See also note 5.

UPDATE

337 The exercise and enforcement of commonhold rights or duties

TEXT AND NOTE 4--Head (2). Reference to memorandum omitted: Commonhold and Leasehold Reform Act 2002 s 37(1)(b) (amended by SI 2009/1941).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/4. THE OPERATION OF COMMONHOLD/338. Payments made by unit-holders of commonhold units.

338. Payments made by unit-holders of commonhold units.

A commonhold community statement¹ must make provision²:

- 196 (1) requiring the directors³ of the commonhold association⁴ to make an annual estimate of the income required to be raised from unit-holders to meet the expenses of the association⁵;
- 197 (2) enabling the directors of the commonhold association to make estimates from time to time of income required to be raised from unit-holders in addition to the annual estimate⁶;
- 198 (3) specifying the percentage of any estimate made under head (1) or head (2) above which is to be allocated to each unit⁷;
- 199 (4) requiring each unit-holder to make payments in respect of the percentage of any estimate which is allocated to his unit⁸; and
- 200 (5) requiring the directors of the commonhold association to serve notices on unit-holders specifying payments required to be made by them and the date on which each payment is due⁹.

The regulations which make provision about the content of a commonhold community statement¹⁰ may, in particular, require a commonhold community statement to make provision¹¹:

- 201 (a) requiring the directors of the commonhold association to establish and maintain one or more funds to finance the repair and maintenance¹² of common parts¹³;
- 202 (b) requiring the directors of the commonhold association to establish and maintain one or more funds to finance the repair and maintenance of commonhold units¹⁴.

Where a commonhold community statement provides for the establishment and maintenance of a fund in accordance with head (a) above it must also make provision¹⁵:

- 203 (i) requiring or enabling the directors of the commonhold association to set a levy from time to time¹⁶;
- 204 (ii) specifying the percentage of any levy set under head (i) above which is to be allocated to each unit¹⁷;
- 205 (iii) requiring each unit-holder to make payments in respect of the percentage of any levy set under head (i) above which is allocated to his unit¹⁸; and
- 206 (iv) requiring the directors of the commonhold association to serve notices on unit-holders specifying payments required to be made by them and the date on which each payment is due¹⁹.

The assets of a fund established and maintained in this way²⁰ must not be used for the purpose of enforcement of any debt²¹ except a judgment debt²² referable to a reserve fund activity²³. However, this prohibition ceases to have effect in relation to a commonhold association (in respect of debts and liabilities accruing at any time) if:

- 207 (A) the court²⁴ makes a winding-up order in respect of the association²⁵;
- 208 (B) the association passes a voluntary winding-up resolution²⁶; or
- 209 (C) the court makes an order²⁷ for all the land²⁸ in relation to which the association exercises functions to cease to be commonhold land²⁹.

1 As to the meaning of 'commonhold community statement' see PARA 311.

2 Commonhold and Leasehold Reform Act 2002 s 38(1). In the application of s 38(1) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(fa) (added by SI 2004/1829). As to the meanings of 'unit-holder' and 'joint unit-holder' see PARA 331.

3 As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.

4 As to the meaning of 'commonhold association' see PARA 305.

5 Commonhold and Leasehold Reform Act 2002 s 38(1)(a); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.1. Subject to Sch 3 para 4.2.5, when the directors of the commonhold association consider that income is required to be raised from unit-holders they must give a notice in the prescribed form containing details of the proposed commonhold assessment to each unit-holder: Sch 3 para 4.2.2. For the prescribed form of notice of proposed commonhold assessment see Sch 4, Form 1. Within one month, beginning with the date on which that notice is given, each unit-holder may make written representations to the commonhold association regarding the amount of the proposed commonhold assessment: Sch 3 para 4.2.3. The directors must consider any representations so made and must give a further notice in the prescribed form to each unit-holder specifying the payments required to be made by that unit-holder and the date on which each payment is due. The notice must not specify a date for payment which is within 14 days, beginning with the date on which the notice is given: Sch 3 para 4.2.4. For the prescribed form of request for payment of commonhold assessment see Sch 4, Form 2. If, however, the commonhold association requires income to meet its expenses in an emergency, then the directors of the commonhold association may give a notice in the prescribed form to each unit-holder requiring payment of the commonhold assessment without seeking representations from unit-holders: Sch 3 para 4.2.5. For the prescribed form of request for payment of emergency commonhold assessment see Sch 4, Form 3. As to the method of giving notice see Sch 3 paras 4.9.1-4.9.10.

6 Commonhold and Leasehold Reform Act 2002 s 38(1)(b); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.1.

7 Commonhold and Leasehold Reform Act 2002 s 38(1)(c). For the purposes of s 38: (1) the percentages allocated by a commonhold community statement to the commonhold units must amount in aggregate to 100 (s 38(2)(a)); and (2) a commonhold community statement may specify 0% in relation to a unit (s 38(2)(b)). As to the meaning of 'commonhold unit' see PARA 330. See further the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 3.2.1.

8 Commonhold and Leasehold Reform Act 2002 s 38(1)(d); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.15. If payment is not made by the due date, the unit-holder must pay interest to the commonhold association at the prescribed rate for the period beginning with the date on which the payment is due and ending on the date on which the payment is made: Sch 3 para 4.2.16. 'Prescribed rate' means the rate of interest specified by the commonhold association in Sch 3, Annex 4 para 1 (local rules): Sch 3 para 1.4.5.

9 Commonhold and Leasehold Reform Act 2002 s 38(1)(e); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.4, cited in note 5.

10 In the regulations made under the Commonhold and Leasehold Reform Act 2002 s 32: see PARA 311. As to the relevant regulations see PARA 312.

11 Commonhold and Leasehold Reform Act 2002 s 39(1).

12 As to the duty to maintain see PARA 332 note 8.

13 Commonhold and Leasehold Reform Act 2002 s 39(1)(a); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5 (meaning of 'reserve fund'), Sch 3 paras 4.2.6-4.2.10 (establishment of reserve fund). As to the meaning of 'common parts' see PARA 332.

14 Commonhold and Leasehold Reform Act 2002 s 39(1)(b); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.2.6-4.2.10.

15 Commonhold and Leasehold Reform Act 2002 s 39(2).

16 Commonhold and Leasehold Reform Act 2002 s 39(2)(a); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.11.

17 Commonhold and Leasehold Reform Act 2002 s 39(2)(b); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 3.3.1. For the purposes of the Commonhold and Leasehold Reform Act 2002 s 39: (1) the percentages allocated by a commonhold community statement to the commonhold units must amount in aggregate to 100 (s 39(3)(a)); and (2) a commonhold community statement may specify 0% in relation to a unit (s 39(3)(b)). When the directors of the commonhold association set a levy they must give a notice containing the details of the proposed levy to each unit-holder: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.12. For the prescribed form of notice see Sch 4, Form 4. Within one month, beginning with the date on which that notice is given, each unit-holder may make written representations to the commonhold association regarding the amount of the levy: Sch 3 para 4.2.13. The directors must consider any representations so made and must give a further notice to each unit-holder specifying the payments required to be made by that unit-holder and the date on which each payment is due. The notice must not specify a date for payment which is within 14 days beginning with the date on which the notice is given: see Sch 3 para 4.2.14. For the prescribed form of request for payment see Sch 4, Form 5.

18 Commonhold and Leasehold Reform Act 2002 s 39(2)(c); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.15. As to interest on late payments see Sch 3 para 4.2.16. In the application of the Commonhold and Leasehold Reform Act 2002 s 39(2) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(fb) (added by SI 2004/1829).

19 Commonhold and Leasehold Reform Act 2002 s 39(2)(d); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.13.

20 I.e. the assets of a fund established and maintained by virtue of the Commonhold and Leasehold Reform Act 2002 s 39.

21 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 39, assets are used for the purpose of enforcement of a debt if, in particular, they are taken in execution or are made the subject of a charging order under the Charging Orders Act 1979 s 1 (see **CIVIL PROCEDURE** vol 12 (2009) PARAS 1467-1470): Commonhold and Leasehold Reform Act 2002 s 39(5)(b).

22 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 39, the reference to a judgment debt includes a reference to any interest payable on a judgment debt: s 39(5)(c).

23 Commonhold and Leasehold Reform Act 2002 s 39(4). For the purposes of s 39, 'reserve fund activity' means an activity which in accordance with the commonhold community statement can or may be financed from a fund established and maintained by virtue of s 39: s 39(5)(a).

24 As to the meaning of 'court' see PARA 301 note 17.

25 Commonhold and Leasehold Reform Act 2002 s 56(a). As to the winding up of a commonhold association by the court see PARAS 359-360.

26 Commonhold and Leasehold Reform Act 2002 s 56(b). As to voluntary winding-up resolutions see PARAS 355-358.

27 I.e. by virtue of the Commonhold and Leasehold Reform Act 2002 s 6(6)(c) (see PARA 321) or s 40(3)(d) (see PARA 340).

28 As to the meaning of 'land' see PARA 301 note 2.

29 Commonhold and Leasehold Reform Act 2002 s 56(c). As to the exercise by a commonhold association of functions in relation to commonhold land see PARA 302 note 8; and as to the meaning of 'commonhold land' see PARA 302.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/4. THE OPERATION OF COMMONHOLD/339. Diversion of rent from tenant of a unit-holder to meet payment due to commonhold association.

339. Diversion of rent from tenant of a unit-holder to meet payment due to commonhold association.

If a unit-holder¹ has not paid all or part of any payment due to the commonhold association², then the commonhold association may give a notice³ in the prescribed form⁴ requiring a tenant⁵ to divert to the commonhold association all or part of the rent⁶ payable to the unit-holder from time to time under the tenancy agreement until the commonhold association has recovered from the tenant an equivalent sum to the amount due from the unit-holder⁷. The commonhold association must specify in the notice the payments that the tenant is required to make; but in any single payment, the commonhold association must not require the tenant to pay more rent than is due under the tenancy agreement, to pay rent earlier than is due under the tenancy agreement, or to pay rent earlier than the diversion date⁸. A tenant who receives such a notice must make the payments required by the notice⁹. Unless the commonhold association specifies a later date in the notice, the tenant must make the first payment on the next date, after the diversion date, that rent is required to be paid under the tenancy agreement¹⁰. A tenant may not rely on any non-statutory right of deduction, set-off or counterclaim that he has against the unit-holder to reduce the amount to be paid to the commonhold association¹¹.

The commonhold association must, within a period of 14 days, beginning with the date on which all the payments required in the notice have been made, notify the tenant and the unit-holder that the diversion of rent has ended¹².

A payment made in accordance with the above provisions¹³ discharges, to the extent of the payment, the liability of:

210 (1) the unit-holder for the amount he has failed to pay to the commonhold association; and

211 (2) the tenant for the payment of rent owed to the unit-holder¹⁴.

A unit-holder is deemed to have received and accepted rent, for the purposes of the tenancy agreement, in an amount equal to the payment so made¹⁵, and may not forfeit the tenancy for the non-payment of rent deemed to have been paid, or bring proceedings for breach of any covenant or condition in the tenancy agreement for the non-payment of the rent deemed to have been paid¹⁶.

Where a tenant¹⁷ fails to make payment under the above provisions, then if he has a sub-tenant¹⁸ rent may similarly be diverted from that sub-tenant¹⁹.

1 As to the meaning of 'unit-holder' see PARA 313 note 14.

2 I.e. any payment due under the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.15 or Sch 3 para 4.2.16: see PARA 338. As to the commonhold association see PARA 305 et seq.

3 As to the method of giving notice see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.9.1-4.9.10.

4 For the prescribed form see the Commonhold Regulations 2004, SI 2004/1829, Sch 4, Form 6.

5 For the purposes of the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.2.18-4.2.26 (see the text and notes 1-4, 6-16), 'tenant' means only an immediate tenant of the unit-holder who has failed to pay: Sch 3 para 4.2.17.

6 'Rent' means such moneys as are defined as rent in the relevant tenancy agreement: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5.

7 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.18. The commonhold association must also give a copy of the notice to the unit-holder: Sch 3 para 4.2.18.

8 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.19. 'Diversion date' means the date on which a period of 14 days ends, beginning with the date on which the notice referred to in Sch 3 para 4.2.18 is given: Sch 3 para 4.2.17.

9 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.20. If a payment required by Sch 3 para 4.2.20 is not made by the date on which it is due, then the tenant must pay interest to the commonhold association at the prescribed rate for the period beginning with the date on which the payment is due and ending on the date on which the payment is made: Sch 3 para 4.2.26. As to the meaning of 'the prescribed rate' see PARA 338 note 8.

10 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.21.

11 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.23.

12 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.22.

13 Ie a payment made in accordance with the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.20: see the text and note 9.

14 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.24.

15 Ie made in accordance with the Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.20: see the text and note 9.

16 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.25.

17 For the purposes of the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.2.28-4.2.37 (see the text and notes 18-19), 'tenant' means only an immediate tenant of the unit-holder: Sch 3 para 4.2.27.

18 For these purposes, 'sub-tenant' means only the immediate tenant of the tenant who has failed to pay: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.27.

19 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.2.28-4.2.37.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/4. THE OPERATION OF COMMONHOLD/340. Application by unit-holder for rectification of documents relating to commonhold land.

340. Application by unit-holder for rectification of documents relating to commonhold land.

A unit-holder¹ may apply to the court² for a declaration³ that:

- 212 (1) the memorandum or articles of association of the relevant commonhold association⁴ do not comply with regulations⁵;
- 213 (2) the relevant commonhold community statement⁶ does not comply with a requirement imposed by or by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002⁷.

Such an application must be made⁸:

- 214 (a) within the period of three months beginning with the day on which the applicant became a unit-holder⁹;
- 215 (b) within three months of the commencement of the alleged failure to comply¹⁰;
- or
- 216 (c) with the permission of the court¹¹.

On granting a declaration the court may make any order which appears to it to be appropriate¹². Such an order may, in particular¹³:

- 217 (i) require a director¹⁴ or other specified officer of a commonhold association to take steps to alter or amend a document¹⁵;
- 218 (ii) require a director or other specified officer of a commonhold association to take specified steps¹⁶;
- 219 (iii) make an award of compensation (whether or not contingent upon the occurrence or non-occurrence of a specified event) to be paid by the commonhold association to a specified person¹⁷;
- 220 (iv) make provision for land to cease to be commonhold land¹⁸.

An application to give effect in the register¹⁹ to an order of the court under the above provisions must be made in the prescribed form²⁰.

1 As to the meaning of 'unit-holder' see PARA 331. In the application of the Commonhold and Leasehold Reform Act 2002 s 40(1) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(g). As to the meaning of 'joint unit-holder' see PARA 331.

2 As to the meaning of 'court' see PARA 301 note 17.

3 Commonhold and Leasehold Reform Act 2002 s 40(1).

4 As to the memorandum and articles of association of the commonhold association see PARA 306. As to the meaning of 'commonhold association' see PARA 305.

5 Commonhold and Leasehold Reform Act 2002 s 40(1)(a). The regulations referred to in the text are those made under Sch 3 para 2(1): see PARA 306.

- 6 As to the meaning of 'commonhold community statement' see PARA 311.
- 7 Commonhold and Leasehold Reform Act 2002 s 40(1)(b).
- 8 Commonhold and Leasehold Reform Act 2002 s 40(4).
- 9 Commonhold and Leasehold Reform Act 2002 s 40(4)(a).
- 10 Commonhold and Leasehold Reform Act 2002 s 40(4)(b).
- 11 Commonhold and Leasehold Reform Act 2002 s 40(4)(c).
- 12 Commonhold and Leasehold Reform Act 2002 s 40(2).
- 13 Commonhold and Leasehold Reform Act 2002 s 40(3).
- 14 As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.
- 15 Commonhold and Leasehold Reform Act 2002 s 40(3)(a).
- 16 Commonhold and Leasehold Reform Act 2002 s 40(3)(b).
- 17 Commonhold and Leasehold Reform Act 2002 s 40(3)(c). As to the meaning of 'person' see PARA 301 note 20.
- 18 Commonhold and Leasehold Reform Act 2002 s 40(3)(d). See further PARA 361. As to the meaning of 'land' see PARA 301 note 2; and as to the meaning of 'commonhold land' see PARA 302.
- 19 As to the meaning of 'the register' see PARA 309 note 10.
- 20 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 12. For the prescribed form see the Land Registration Rules 2003, SI 2003/1417, Sch 1, Form AP1.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/4. THE OPERATION OF COMMONHOLD/341. Dispute resolution by ombudsman scheme in relation to commonhold association.

341. Dispute resolution by ombudsman scheme in relation to commonhold association.

Regulations may provide that a commonhold association¹ must be a member of an approved ombudsman scheme². At the date at which this title states the law, however, no regulations had been made for these purposes.

An approved ombudsman scheme is a scheme which is approved by the Lord Chancellor³ and which:

- 221 (1) provides for the appointment of one or more persons⁴ as ombudsman⁵;
- 222 (2) provides for a person to be appointed as ombudsman only if the Lord Chancellor approves the appointment in advance⁶;
- 223 (3) enables a unit-holder⁷ to refer to the ombudsman a dispute between the unit-holder and a commonhold association which is a member of the scheme⁸;
- 224 (4) enables a commonhold association which is a member of the scheme to refer to the ombudsman a dispute between the association and a unit-holder⁹;
- 225 (5) requires the ombudsman to investigate and determine a dispute referred to him¹⁰;
- 226 (6) requires a commonhold association which is a member of the scheme to co-operate with the ombudsman in investigating or determining a dispute¹¹; and
- 227 (7) requires a commonhold association which is a member of the scheme to comply with any decision of the ombudsman (including any decision requiring the payment of money)¹².

If a commonhold association fails to comply with the relevant regulations¹³, a unit-holder may apply to the High Court¹⁴ for an order requiring the directors¹⁵ of the commonhold association to ensure that the association complies with the regulations¹⁶.

1 As to the meaning of 'commonhold association' see PARA 305.

2 Commonhold and Leasehold Reform Act 2002 s 42(1). As to the making of regulations under Pt 1 (ss 1-70) generally see PARA 301 note 12. The Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.11.1-4.11.30 (dispute resolution: see further PARA 337) provide only that, if the commonhold association is a member of an approved ombudsman scheme, a dispute between a unit-holder or tenant and the commonhold association may be referred directly to the ombudsman: see Sch 3 paras 4.11.3(b), 4.11.11.(b). In the case of a dispute between a unit-holder or tenant and another unit-holder or tenant, the prescribed dispute resolution scheme makes no specific mention of an ombudsman scheme, merely stating that consideration must be given to resolving the matter using arbitration, mediation, conciliation or any other form of dispute resolution procedure involving a third party, other than legal proceedings: see Sch 3 paras 4.11.9(b), 4.11.29(b).

3 Commonhold and Leasehold Reform Act 2002 s 42(2). In addition to the matters specified in s 42(2) (see heads (1)-(7) in the text), an approved ombudsman scheme: (1) may contain other provision (s 42(3)(a)); and (2) must contain such provision, or provision of such a kind, as may be prescribed by regulations (see note 2) (s 42(3)(b)). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

4 As to the meaning of 'person' see PARA 301 note 20.

5 Commonhold and Leasehold Reform Act 2002 s 42(2)(a).

6 Commonhold and Leasehold Reform Act 2002 s 42(2)(b).

- 7 As to the meaning of 'unit-holder' see PARA 331. A reference in the Commonhold and Leasehold Reform Act 2002 s 42 to a unit-holder includes a reference to a tenant of a unit (see PARA 344): s 42(5).
- 8 Commonhold and Leasehold Reform Act 2002 s 42(2)(c).
- 9 Commonhold and Leasehold Reform Act 2002 s 42(2)(d).
- 10 Commonhold and Leasehold Reform Act 2002 s 42(2)(e).
- 11 Commonhold and Leasehold Reform Act 2002 s 42(2)(f).
- 12 Commonhold and Leasehold Reform Act 2002 s 42(2)(g).
- 13 Ie the regulations made under s 42(1): see the text and notes 1-2.
- 14 As to the High Court see **COURTS** vol 10 (Reissue) PARA 602 et seq.
- 15 As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.
- 16 Commonhold and Leasehold Reform Act 2002 s 42(4).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5.
TRANSACTIONS INVOLVING COMMONHOLD LAND/(1) TRANSFER OF COMMONHOLD UNITS/342.
No permissible restriction on transfer of commonhold units.

5. TRANSACTIONS INVOLVING COMMONHOLD LAND

(1) TRANSFER OF COMMONHOLD UNITS

342. No permissible restriction on transfer of commonhold units.

A commonhold community statement¹ may not prevent or restrict the transfer of a commonhold unit². For these purposes, a reference to the transfer of a commonhold unit is a reference to the transfer of a unit-holder's³ freehold estate⁴ in a unit to another person⁵:

- 228 (1) whether or not for consideration⁶;
- 229 (2) whether or not subject to any reservation or other terms⁷; and
- 230 (3) whether or not by operation of law⁸.

On the transfer of a commonhold unit, the new unit-holder must notify the commonhold association⁹ of the transfer¹⁰. Regulations may:

- 231 (a) prescribe the form and manner of such notice¹¹;
- 232 (b) prescribe the time within which notice is to be given¹²;
- 233 (c) make provision (including provision requiring the payment of money) about the effect of failure to give notice¹³.

1 As to the meaning of 'commonhold community statement' see PARA 311.

2 Commonhold and Leasehold Reform Act 2002 s 15(2). As to the meaning of 'commonhold unit' see PARA 330.

As to unlawful discrimination in connection with the disposal of property see generally **DISCRIMINATION**. Only in the case of disability discrimination, however, is specific statutory provision made in relation to commonholds: see PARA 348 note 11.

3 As to the meaning of 'unit-holder' see PARA 331. In the application of the Commonhold and Leasehold Reform Act 2002 s 15(1) to a unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: s 13(2)(b) (amended by SI 2004/1829). As to the meaning of 'joint unit-holder' see PARA 331.

4 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

5 As to the meaning of 'person' see PARA 301 note 20.

6 Commonhold and Leasehold Reform Act 2002 s 15(1)(a). As to consideration see **CONTRACT** vol 9(1) (Reissue) PARA 727 et seq.

7 Commonhold and Leasehold Reform Act 2002 s 15(1)(b). As to the reservation of a legal estate see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 168.

8 Commonhold and Leasehold Reform Act 2002 s 15(1)(c).

9 As to the meaning of 'commonhold association' see PARA 305.

10 Commonhold and Leasehold Reform Act 2002 s 15(3). In the application of s 15(3) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(ab) (added by SI 2004/1829).

11 Commonhold and Leasehold Reform Act 2002 s 15(4)(a). For the purposes of Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12. For the prescribed forms see the Commonhold Regulations 2004, SI 2004/1829, Sch 4, Form 10 (notice of transfer of a commonhold unit), Form 11 (notice of transfer of part of a commonhold unit).

12 Commonhold and Leasehold Reform Act 2002 s 15(4)(b). When a person becomes entitled to be registered as the proprietor of a freehold estate in a commonhold unit, he must notify the commonhold association within 14 days, beginning with the date on which he is entitled to be registered: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.8. This is subject to Sch 3 para 4.7.9 (entitlement to be registered by operation of law). As to the method of giving notice see Sch 3 paras 4.9.1-4.9.10.

13 Commonhold and Leasehold Reform Act 2002 s 15(4)(c).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5.
TRANSACTIONS INVOLVING COMMONHOLD LAND/(1) TRANSFER OF COMMONHOLD UNITS/343.
Effect of transfer of a commonhold unit.

343. Effect of transfer of a commonhold unit.

A right or duty conferred or imposed:

- 234 (1) by a commonhold community statement¹; or
- 235 (2) in accordance with the provisions governing transactions other than leasing²,

affects a new unit-holder³ in the same way as it affected the former unit-holder⁴.

A former unit-holder may not incur a liability or acquire a right⁵:

- 236 (a) under or by virtue of the commonhold community statement⁶; or
- 237 (b) by virtue of anything done in accordance with the provisions governing transactions other than leasing⁷.

This prohibition⁸ is not capable of being disapplied or varied by agreement⁹, and is without prejudice to any liability or right incurred or acquired before a transfer takes effect¹⁰.

Following a transfer of a commonhold unit, the commonhold association may give a notice requiring the new unit-holder to pay to the commonhold association the debts owed¹¹ by any former unit-holder in respect of that commonhold unit¹². Within 14 days, beginning with the date on which that notice is given, the new unit-holder must pay to the commonhold association the sum required by the notice¹³; and when payment is so made, the commonhold association's right to enforce the payment of the sum paid against the former unit-holder is deemed to have been assigned to the new unit-holder¹⁴. When, however, the commonhold association has provided a commonhold unit information certificate¹⁵ the new unit-holder cannot be required to pay more than the amount specified in that certificate for the period up to and including the date of the certificate¹⁶.

1 As to the meaning of 'commonhold community statement' see PARA 311.

2 The provisions referred to in the text are those of the Commonhold and Leasehold Reform Act 2002 s 20: see PARA 348.

3 For these purposes, 'new unit-holder' means a person to whom a commonhold unit is transferred (whether or not he has yet become the registered proprietor): Commonhold and Leasehold Reform Act 2002 s 16(4). As to the meaning of 'person' see PARA 301 note 20; as to the meaning of 'commonhold unit' see PARA 330; and as to the meaning of 'registered' see PARA 309 note 10. As to the transfer of a commonhold unit see PARA 342. As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**. In the application of s 16 to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(b). As to the meanings of 'unit-holder' and 'joint unit-holder' see PARA 331.

4 Commonhold and Leasehold Reform Act 2002 s 16(1). For these purposes, 'former unit-holder' means a person from whom a commonhold unit has been transferred (whether or not he has ceased to be the registered proprietor): s 16(4).

5 Commonhold and Leasehold Reform Act 2002 s 16(2).

6 Commonhold and Leasehold Reform Act 2002 s 16(2)(a).

7 Commonhold and Leasehold Reform Act 2002 s 16(2)(b).

8 le the prohibition contained in the Commonhold and Leasehold Reform Act 2002 s 16(2): see the text and notes 6-8.

9 Commonhold and Leasehold Reform Act 2002 s 16(3)(a).

10 Commonhold and Leasehold Reform Act 2002 s 16(3)(b).

11 le the debts owed under the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 42.15, 4.2.16: see PARA 338.

12 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.3. As to the method of giving notice see Sch 3 paras 4.9.1-4.9.10.

13 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.5. If a payment required by Sch 3 para 4.7.5 is not made by the date on which it is due, then the new unit-holder must pay interest to the commonhold association at the prescribed rate for the period beginning with the date on which the payment is due and ending on the date on which the payment is made: Sch 3 para 4.7.6. As to the meaning of 'the prescribed rate' see PARA 338 note 8.

14 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.7.

15 'Commonhold unit information certificate' means a certificate stating the debts owed to the commonhold association in respect of the commonhold assessment or levy allocated to a commonhold unit and any interest added in respect of late payment: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5. As to commonhold assessment and levy see PARA 338. A unit-holder may give a notice requiring the commonhold association to provide a commonhold unit information certificate in respect of his commonhold unit: Sch 3 para 4.7.1. Within 14 days, beginning with the date on which that notice is given, the commonhold association must provide a commonhold unit information certificate in the prescribed form, and given in the same manner as a notice, to the unit-holder: see Sch 3 para 4.7.2. For the prescribed form see Sch 4, Form 9.

16 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.4.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(2) GRANTING OF LEASES/344. Grant of lease over residential commonhold unit.

(2) GRANTING OF LEASES

344. Grant of lease over residential commonhold unit.

It is not possible to create a term of years absolute¹ in a residential commonhold unit² unless the term satisfies prescribed³ conditions⁴. The conditions may relate to length⁵, the circumstances in which the term is granted⁶, or any other matter⁷.

A term of years absolute in a residential commonhold unit or part only of a residential commonhold unit must not:

- 238 (1) be granted for a premium⁸;
- 239 (2) subject to the exception set out below⁹, be granted for a term longer than seven years¹⁰;
- 240 (3) be granted under an option or agreement if:
 - 17 33. (a) the person to take the new term of years absolute has an existing term of years absolute of the premises to be let;
 - 34. (b) the new term when added to the existing term will be more than seven years; and
 - 35. (c) the option or agreement was entered into before or at the same time as the existing term of years absolute¹¹;
- 18 241 (4) contain an option or agreement to renew the term of years absolute which confers on the lessee or on the lessor an option or agreement for renewal for a further term which, together with the original term, amounts to more than seven years¹²;
- 242 (5) contain an option or agreement to extend the term beyond seven years¹³; or
- 243 (6) contain a provision requiring the lessee to make payments to the commonhold association¹⁴ in discharge of payments which are due, in accordance with the commonhold community statement¹⁵, to be made by the unit-holder¹⁶.

A term of years absolute in a residential commonhold unit or part only of a residential commonhold unit may, however, be granted for a term of not more than 21 years to the holder of a lease which has been extinguished¹⁷ if the term of years absolute:

- 244 (i) is granted of the same premises as are comprised in the extinguished lease¹⁸;
- 245 (ii) is granted on the same terms as the extinguished lease, except to the extent necessary to comply with Part 1 of the Commonhold and Leasehold Reform Act 2002¹⁹ and the Commonhold Regulations 2004²⁰ and excluding any terms that are spent²¹;
- 246 (iii) is granted at the same rent as the rent payable under, and including the same provisions for rent review as were included in, the extinguished lease as at the date on which it was extinguished²²;
- 247 (iv) is granted for a term equivalent to the unexpired term of the lease immediately before it was extinguished or, if the unexpired term of the lease immediately before it was extinguished is more than 21 years, for a term of 21 years²³;

- 248 (v) takes effect immediately after the lease was extinguished²⁴; and
- 249 (vi) does not include any option or agreement which may create a term or an extension to a term which, together with the term of the term of years absolute, would amount to more than 21 years, or which may result in the grant of a term of years absolute containing an option or agreement to extend the term²⁵.

An instrument²⁶ or agreement is of no effect to the extent that it purports to create a term of years in contravention of the prohibition set out above²⁷. However, where an instrument or agreement purports to create a term of years in contravention of this prohibition, a party to the instrument or agreement may apply to the court²⁸ for an order:

- 250 (A) providing for the instrument or agreement to have effect as if it provided for the creation of a term of years of a specified kind²⁹;
- 251 (B) providing for the return or payment of money³⁰;
- 252 (C) making such other provision as the court thinks appropriate³¹.

An application to give effect in the register³² to such an order of the court must be made in the prescribed form³³.

1 le a leasehold: see PARA 301 note 2.

2 As to the meaning of 'commonhold unit' see PARA 330. A commonhold unit is residential if provision made in the commonhold community statement by virtue of the Commonhold and Leasehold Reform Act 2002 s 14(1) (see PARA 311) requires it to be used only for residential purposes, or for residential and other incidental purposes: s 17(5). As to the meaning of 'commonhold community statement' see PARA 311.

3 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12.

4 Commonhold and Leasehold Reform Act 2002 s 17(1). As to the prohibition of unlawful discrimination when consenting to the granting of, or being party to, such a lease see generally **DISCRIMINATION**. Only in the case of disability discrimination, however, is specific statutory provision made in relation to commonholds: see PARA 348 note 11.

5 Commonhold and Leasehold Reform Act 2002 s 17(2)(a).

6 Commonhold and Leasehold Reform Act 2002 s 17(2)(b).

7 Commonhold and Leasehold Reform Act 2002 s 17(2)(c). As to unlawful discrimination in connection with the disposal of property see generally **DISCRIMINATION**. Only in the case of disability discrimination, however, is specific statutory provision made in relation to commonholds: see PARA 348 note 11.

8 Commonhold Regulations 2004, SI 2004/1829, reg 11(1)(a); and see Sch 3 para 4.7.11(a).

9 le subject to the Commonhold Regulations 2004, SI 2004/1829, reg 11(2): see the text and notes 17-26.

10 Commonhold Regulations 2004, SI 2004/1829, reg 11(1)(b); and see Sch 3 para 4.7.11(b).

11 Commonhold Regulations 2004, SI 2004/1829, reg 11(1)(c); and see Sch 3 para 4.7.11(c).

12 Commonhold Regulations 2004, SI 2004/1829, reg 11(1)(d); and see Sch 3 para 4.7.11(d).

13 Commonhold Regulations 2004, SI 2004/1829, reg 11(1)(e); and see Sch 3 para 4.7.11(e).

14 As to the meaning of 'commonhold association' see PARA 305.

15 As to the commonhold community statement see PARAS 311-312.

16 Commonhold Regulations 2004, SI 2004/1829, reg 11(1)(f); and see Sch 3 para 4.7.11(f). In the application of reg 11(1) to a commonhold unit with joint unit-holders a reference to a unit-holder includes a

reference to each joint unit-holder and to the joint unit-holders together: reg 2(2)(a). As to the meanings of 'unit-holder' and 'joint unit-holder' see PARA 331.

17 le under the Commonhold and Leasehold Reform Act 2002 s 7(3)(d) (see PARA 322) or s 9(3)(f) (see PARA 324).

18 Commonhold Regulations 2004, SI 2004/1829, reg 11(2)(a).

19 le the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70).

20 le the Commonhold Regulations 2004, SI 2004/1829.

21 Commonhold Regulations 2004, SI 2004/1829, reg 11(2)(b).

22 Commonhold Regulations 2004, SI 2004/1829, reg 11(2)(c).

23 Commonhold Regulations 2004, SI 2004/1829, reg 11(2)(d).

24 Commonhold Regulations 2004, SI 2004/1829, reg 11(2)(e).

25 Commonhold Regulations 2004, SI 2004/1829, reg 11(2)(f).

26 As to the meaning of 'instrument' see PARA 332 note 15.

27 Commonhold and Leasehold Reform Act 2002 s 17(3). The prohibition referred to in the text is that contained in s 17(1): see the text and notes 1-4.

28 As to the meaning of 'court' see PARA 301 note 17.

29 Commonhold and Leasehold Reform Act 2002 s 17(4)(a).

30 Commonhold and Leasehold Reform Act 2002 s 17(4)(b).

31 Commonhold and Leasehold Reform Act 2002 s 17(4)(c).

32 As to the meaning of 'the register' see PARA 309 note 10.

33 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 12. For the prescribed form see the Land Registration Rules 2003, SI 2003/1417, Sch 1, Form AP1.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(2) GRANTING OF LEASES/345. Grant of lease over non-residential commonhold unit.

345. Grant of lease over non-residential commonhold unit.

An instrument¹ or agreement which creates a term of years absolute in a commonhold unit² which is not residential³ has effect subject to any provision of the commonhold community statement⁴.

1 As to the meaning of 'instrument' see PARA 332 note 15.

2 As to the meaning of 'commonhold unit' see PARA 330.

3 I.e. a commonhold unit which is not residential within the meaning of the Commonhold and Leasehold Reform Act 2002 s 17: see PARA 344 note 2.

4 Commonhold and Leasehold Reform Act 2002 s 18.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(2) GRANTING OF LEASES/346. Notification and registration of grant of tenancy in a commonhold unit.

346. Notification and registration of grant of tenancy in a commonhold unit.

Within 14 days, beginning with the date on which a tenancy¹ is granted, the unit-holder² or tenant who grants the tenancy must notify³ the commonhold association⁴ that the tenancy has been granted and must give a copy of any written tenancy agreement, or details of the terms of any oral tenancy, to the commonhold association⁵.

When a term of years absolute is created in a commonhold unit and the lease is registered⁶, the registrar⁷ must enter a note in the property register of the leasehold title that it is a lease of a commonhold unit⁸.

If a commonhold unit is let under a tenancy agreement, then the commonhold association may give a notice in the prescribed form⁹ to one or all of the parties to the tenancy agreement requesting details of the length of the tenancy and the rent¹⁰ payable¹¹. Within 14 days, beginning with the date on which that notice is given, the recipient must give a notice in the prescribed form¹² to the commonhold association providing the details requested¹³.

1 For these purposes, 'tenancy' means a term of years absolute in a commonhold unit or part only of a commonhold unit and includes 'sub-tenancy'; and the term 'tenant' is to be interpreted accordingly: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 1.4.5. As to the meaning of 'commonhold unit' see PARAS 312 note 11, 330.

2 As to the meaning of 'unit-holder' see PARA 331.

3 The notification must be given in the prescribed form: Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.15. For the prescribed form see Sch 4, Form 14.

4 As to the commonhold association see PARA 305.

5 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.15.

6 As to the meaning of 'registered' see PARA 309 note 10.

7 As to the meaning of 'the registrar' see PARA 309 note 13.

8 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 30.

9 For the prescribed form see the Commonhold Regulations 2004, SI 2004/1829, Form 8 Pt A.

10 As to the meaning of 'rent' see PARA 339 note 6.

11 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.41.

12 For the prescribed form see the Commonhold Regulations 2004, SI 2004/1829, Form 8 Pt B.

13 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.2.42.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(2) GRANTING OF LEASES/347. Obligations imposed on a tenant of a commonhold unit.

347. Obligations imposed on a tenant of a commonhold unit.

Regulations¹ may:

- 253 (1) impose obligations on a tenant² of a commonhold unit³;
- 254 (2) enable a commonhold community statement⁴ to impose obligations on a tenant of a commonhold unit⁵.

The regulations may, in particular, require a tenant of a commonhold unit to make payments to the commonhold association⁶ or a unit-holder⁷ in discharge of payments⁸ which:

- 255 (a) are due in accordance with the commonhold community statement to be made by the unit-holder⁹; or
- 256 (b) are due in accordance with the commonhold community statement to be made by another tenant of the unit¹⁰.

Regulations may also modify a rule of law about leasehold estates (whether deriving from the common law or from an enactment) in its application to a term of years in a commonhold unit¹¹.

Before granting a tenancy¹² in a commonhold unit, a prospective landlord must give the prospective tenant:

- 257 (i) a copy of the commonhold community statement (the 'CCS'), including such of the plans or parts of plans as are relevant to that commonhold unit; and
- 258 (ii) a notice in the prescribed form¹³ informing him that he will be required to comply with the paragraphs in the CCS that impose duties on him if he takes the tenancy¹⁴.

If a landlord has not complied with this requirement and a tenant has suffered loss as a result of an obligation in the CCS being enforced against him, then the tenant may give a notice requiring the landlord to reimburse him for that loss, unless the obligation is reproduced in the tenancy agreement¹⁵. Within 14 days, beginning with the date on which that tenant's notice is given, the landlord must reimburse the tenant for the loss suffered¹⁶. Similar provisions apply in the case of an assignment of a tenancy in a commonhold unit¹⁷.

If the commonhold association has suffered loss because a tenant of a commonhold unit has not complied with a duty in the CCS, and the duty is one which must be complied with by both a unit-holder and a tenant, the commonhold association may give a notice requiring the unit-holder to reimburse it for that loss¹⁸. Within 14 days, beginning with the date on which that notice is given, the unit-holder must reimburse the commonhold association for the loss¹⁹.

1 Regulations under the Commonhold and Leasehold Reform Act 2002 s 19:

- 82 (1) may make provision generally or in relation to specified circumstances (s 19(5)(a)); and
- 83 (2) may make different provision for different descriptions of commonhold land or commonhold unit (s 19(5)(b)).

As to the making of regulations under Pt 1 (ss 1-70) generally see PARA 301 note 12. As to the meaning of 'commonhold land' see PARA 302; and as to the meaning of 'commonhold unit' see PARA 330.

2 For these purposes, a reference to a tenant includes a reference to a person who has home rights (within the meaning of the Family Law Act 1996 s 30(2) (matrimonial and civil partnership home rights: see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 285; and see **LAND CHARGES; LAND REGISTRATION**)) in respect of a commonhold unit: Commonhold and Leasehold Reform Act 2002 s 61(a) (amended by the Civil Partnership Act 2004 Sch 9 Pt 2 para 24(1)-(3)).

3 Commonhold and Leasehold Reform Act 2002 s 19(1)(a).

4 As to the meaning of 'commonhold community statement' see PARA 311.

5 Commonhold and Leasehold Reform Act 2002 s 19(1)(b); and see the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 1.1.2, 4.1.2.

6 As to the meaning of 'commonhold association' see PARA 305.

7 As to the meaning of 'unit-holder' see PARA 331. In the application of the Commonhold and Leasehold Reform Act 2002 s 19(2) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(ba) (added by SI 2004/1829). As to the meaning of 'joint unit-holder' see PARA 331.

8 Commonhold and Leasehold Reform Act 2002 s 19(2). Regulations made under the Commonhold and Leasehold Reform Act 2002 s 19(1) (see the text and notes 1-5) may, in particular, provide:

84 (1) for the amount of payments under s 19(2) to be set against sums owed by the tenant (whether to the person by whom the payments were due to be made or to some other person) (s 19(3)(a)); and

85 (2) for the amount of payments under s 19(2) to be recovered from the unit-holder or another tenant of the unit (s 19(3)(b)).

In the application of s 19(3) to a unit with joint unit-holders, a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together: s 13(3)(ba) (added by SI 2004/1829).

9 Commonhold and Leasehold Reform Act 2002 s 19(2)(a). See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.2.17-4.2.26; and PARA 339.

10 Commonhold and Leasehold Reform Act 2002 s 19(2)(b). See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.2.27-4.2.40; and PARA 339.

11 Commonhold and Leasehold Reform Act 2002 s 19(4).

12 As to the meaning of 'tenancy' see PARA 346 note 1.

13 For the prescribed form of notice see the Commonhold Regulations 2004, SI 2004/1829, Sch 4, Form 13. As to the method of giving notice see Sch 3 paras 4.9.1-4.9.10.

14 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.12.

15 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.13.

16 Commonhold Regulations 2004, SI 2004/1829, Sch 3 para 4.7.14.

17 See the Commonhold Regulations 2004, SI 2004/1829, Sch 3 paras 4.7.16-4.7.18. As to notification of the assignment of a tenancy see Sch 3 para 4.7.19.

18 Commonhold Regulations 2004, SI 2004/1829, Sch 3, para 4.7.20.

19 Commonhold Regulations 2004, SI 2004/1829, Sch 3, para 4.7.21.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(3) OTHER TRANSACTIONS/348. No permissible restriction on transactions by commonhold unit-holders other than in relation to leases.

(3) OTHER TRANSACTIONS

348. No permissible restriction on transactions by commonhold unit-holders other than in relation to leases.

A commonhold community statement¹ may not² prevent or restrict the creation, grant or transfer by a unit-holder³ of:

- 259 (1) an interest⁴ in the whole or part of his unit⁵; or
- 260 (2) a charge over his unit⁶.

However, it is not possible to create an interest of a prescribed⁷ kind in a commonhold unit unless the commonhold association⁸:

- 261 (a) is a party to the creation of the interest⁹; or
- 262 (b) consents in writing¹⁰ to the creation of the interest¹¹.

A commonhold association may so act¹² only if:

- 263 (i) the association passes a resolution¹³ to take the action¹⁴; and
- 264 (ii) at least 75 per cent of those who vote on the resolution vote in favour¹⁵.

An instrument¹⁶ or agreement is of no effect to the extent that it purports to create an interest in contravention of these conditions¹⁷.

1 As to the meaning of 'commonhold community statement' see PARA 311.

2 Ie subject to the Commonhold and Leasehold Reform Act 2002 ss 17-19 (which impose restrictions about leases: see PARAS 344-347): s 20(2).

3 As to the meaning of 'unit-holder' see PARA 331. In the application of s 20(1) to a unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: s 13(2)(d). As to the meaning of 'joint unit-holder' see PARA 331.

4 For these purposes, 'interest' does not include a charge, or an interest which arises by virtue of a charge: Commonhold and Leasehold Reform Act 2002 s 20(6).

5 Commonhold and Leasehold Reform Act 2002 s 20(1)(a). As to the meaning of 'commonhold unit' see PARA 330.

6 Commonhold and Leasehold Reform Act 2002 s 20(1)(b). As to charges over part units see PARA 351.

7 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12. At the date at which this title states the law, no regulations had been made for the purposes of s 20.

8 As to the meaning of 'commonhold association' see PARA 305.

9 Commonhold and Leasehold Reform Act 2002 s 20(3)(a).

10 As to the meaning of 'writing' see PARA 310 note 22.

11 Commonhold and Leasehold Reform Act 2002 s 20(3)(b). It is unlawful for any person whose licence or consent is required for the disposal of an interest in a commonhold unit by the unit-holder to discriminate against a disabled person by withholding his licence or consent for the disposal of the interest in favour of, or to, the disabled person: Disability Discrimination Act 1995 s 22A(1) (s 22A added by the Disability Discrimination Act 2005 Sch 1 Pt 1 paras 1, 17). 'Person' includes a body of persons, corporate or unincorporate (Interpretation Act 1978 Sch 1) and thus includes a commonhold association. Regulations may provide for the Disability Discrimination Act 1995 s 22A(1) or (2) not to apply, or to apply only, in cases of a prescribed description: s 22A(3) (as so added). At the date at which this volume states the law, no such regulations had been made. Where it is not possible for an interest in a commonhold unit to be disposed of by the unit-holder unless some other person is a party to the disposal of the interest, it is unlawful for that other person to discriminate against a disabled person by deliberately not being a party to the disposal of the interest in favour of, or to, the disabled person: s 22A(2) (as so added). Regulations may make provision, for these purposes, as to what is, or as to what is not, to be included within the meaning of 'dispose' (and 'disposal'): s 22A(4)(a) (as so added). For these purposes, 'dispose', in relation to an interest in a commonhold unit, includes granting a right to occupy the unit, and 'disposal' is to be construed accordingly (Disability Discrimination (Premises) Regulations 2006, SI 2006/887, reg 8(2)(a)); and an 'interest in a commonhold unit' includes an interest in part only of a commonhold unit (reg 8(2)(b)). As to interests in part units see PARA 350. Regulations may make provision, for these purposes, as to what is, or as to what is not, to be included within the meaning of 'interest in a commonhold unit': Disability Discrimination Act 1995 s 22A(4)(b) (as so added). As to the meanings of 'commonhold unit' and 'unit-holder' for these purposes see PARAS 330-331 (definitions applied by s 22A(5) (as so added)). As to the meaning of 'discrimination' for these purposes see s 21G; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 597; and as to the meaning of 'disabled person' see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511. See further **DISCRIMINATION** vol 13 (2007 Reissue) PARA 601.

It is also unlawful for a person to discriminate against another by refusing permission for the disposal of premises to him:

- 86 (1) on the grounds of religion or belief (see the Equality Act 2006 s 47(3); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 694; as to the meaning of 'discrimination' for these purposes see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 692; and as to the exceptions to this prohibition see s 48; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 694);
- 87 (2) on the grounds of sexual orientation (see the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 5(3); and **DISCRIMINATION** vol 13 (2007 Reissue) para 753; as to the exceptions to this prohibition see reg 6).

As to unlawful sex or racial discrimination by refusing consent for the disposal of premises comprised in a tenancy on such grounds see the Sex Discrimination Act 1975 s 31; the Race Relations Act 1976 s 24; and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 384, 463. Only in the case of disability discrimination, however, is specific statutory provision made in relation to commonholds.

12 Ie as described in the Commonhold and Leasehold Reform Act 2002 s 20(3)(a), (b): see heads (a), (b) in the text.

13 As to the passing of a resolution by a commonhold association see PARA 336.

14 Commonhold and Leasehold Reform Act 2002 s 20(4)(a).

15 Commonhold and Leasehold Reform Act 2002 s 20(4)(b).

16 As to the meaning of 'instrument' see PARA 332 note 15.

17 Commonhold and Leasehold Reform Act 2002 s 20(5). The conditions referred to are those contained in s 20(3): see the text and notes 7-11.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(3) OTHER TRANSACTIONS/349. General prohibition on creation of charges over the common parts.

349. General prohibition on creation of charges over the common parts.

Subject to the exceptions discussed elsewhere in this title¹, it is not possible to create a charge over common parts² of a commonhold³; and any instrument⁴ or agreement is of no effect to the extent that it purports to create a charge over common parts⁵.

1 le subject to the Commonhold and Leasehold Reform Act 2002 s 29 (permitted mortgages): see PARA 332 text and notes 17-21.

2 As to the meaning of 'common parts' see PARA 332.

3 Commonhold and Leasehold Reform Act 2002 s 28(1). See further s 28(3), (4), cited in PARA 332 note 14. As to the meaning of 'a commonhold' see PARA 302 note 8.

4 As to the meaning of 'instrument' see PARA 332 note 15.

5 Commonhold and Leasehold Reform Act 2002 s 28(2).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(3) OTHER TRANSACTIONS/350. Interests in part only of a commonhold unit.

350. Interests in part only of a commonhold unit.

It is not possible to create an interest¹ in part only of a commonhold unit² and an instrument³ or agreement is of no effect to the extent that it purports to create such an interest⁴. However, this prohibition⁵ does not prevent⁶:

- 265 (1) the creation of a term of years absolute⁷ in part only of a residential commonhold unit⁸ where the term satisfies prescribed⁹ conditions¹⁰;
- 266 (2) the creation of a term of years absolute in part only of a non-residential commonhold unit¹¹; or
- 267 (3) the transfer of the freehold estate in part only of a commonhold unit¹² where the commonhold association¹³ consents in writing¹⁴ to the transfer¹⁵.

The Commonhold and Leasehold Reform Act 2002 provides that where:

- 268 (a) land¹⁶ becomes commonhold land¹⁷ or is added to a commonhold unit¹⁸; and
- 269 (b) immediately before that event there is an interest in the land which could not be created after that event by reason of the above prohibition¹⁹,

the interest is extinguished to the extent that it could not be so created²⁰; but at the date at which this volume states the law, that provision had not been brought into force.

Where part only of a unit is held under a lease, regulations²¹ may modify the application of a provision which is made by or by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002²², and which applies to a unit-holder²³ or a tenant, or to both²⁴.

Where the freehold interest in part only of a commonhold unit is transferred, the part transferred becomes a new commonhold unit²⁵ or, in a case where the request for consent under head (3) above states that this provision²⁶ is to apply, becomes part of a commonhold unit specified in the request²⁷. Regulations²⁸ may make provision, or may require a commonhold community statement²⁹ to make provision³⁰, about:

- 270 (i) registration of units created in this way³¹;
- 271 (ii) the adaptation of provision made by or by virtue of Part 1 of the Commonhold and Leasehold Reform Act 2002 or by or by virtue of a commonhold community statement to a case where units are created or modified in this way³².

1 As to the creation of interests in commonhold units see PARA 348.

2 Commonhold and Leasehold Reform Act 2002 s 21(1). As to the meaning of 'commonhold unit' see PARA 330.

3 As to the meaning of 'instrument' see PARA 332 note 15.

4 Commonhold and Leasehold Reform Act 2002 s 21(3).

5 I.e the prohibition contained in the Commonhold and Leasehold Reform Act 2002 s 21(1): see the text and notes 1-2.

6 Commonhold and Leasehold Reform Act 2002 s 21(2).

7 Ie a leasehold: see PARA 301 note 2.

8 As to the meaning of 'residential commonhold unit' see PARA 344 note 2.

9 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12; and as to the prescribed conditions see PARA 344.

10 Commonhold and Leasehold Reform Act 2002 s 21(2)(a). This provision is subject to the application of s 17(2), (4) (see PARA 344), with any necessary modifications: s 21(6). As to the prohibition of unlawful discrimination against disabled persons when granting consent to, or being party to, any such lease see PARA 348 note 11.

11 Commonhold and Leasehold Reform Act 2002 s 21(2)(b). This provision is subject to the application of s 17(2), (4) (see PARA 344), with any necessary modifications: s 21(6). As to the meaning of 'non-residential commonhold unit' see PARA 345 note 3.

12 As to the transfer of the freehold estate in a commonhold unit see PARA 342.

13 As to the meaning of 'commonhold association' see PARA 305.

14 As to the meaning of 'writing' see PARA 310 note 22.

15 Commonhold and Leasehold Reform Act 2002 s 21(2)(c). This provision is subject to the application of s 20(4) (see PARA 348) (s 21(8)); and does not apply to transfer to a compulsory purchaser (see PARA 353). As to the prohibition of unlawful discrimination against disabled persons when granting consent to, or being a party to, any such transfer see PARA 348 note 11.

16 As to the meaning of 'land' see PARA 301 note 2.

17 As to the meaning of 'commonhold land' see PARA 302.

18 Commonhold and Leasehold Reform Act 2002 s 21(4)(a) (not yet in force). As to adding land to a commonhold see PARA 325.

19 Commonhold and Leasehold Reform Act 2002 s 21(4)(b) (not yet in force). The prohibition referred to in the text is that contained in s 21(1): see the text and notes 1-2.

20 Commonhold and Leasehold Reform Act 2002 s 21(5) (not yet in force).

21 See note 9. At the date at which this volume states the law, no such regulations had been made. See, however, the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 15, cited in note 31.

22 Ie by virtue of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70).

23 As to the meaning of 'unit-holder' see PARA 331.

24 Commonhold and Leasehold Reform Act 2002 s 21(7).

25 Ie the part transferred becomes a new commonhold unit by virtue of the Commonhold and Leasehold Reform Act 2002 s 21(9).

26 Ie the Commonhold and Leasehold Reform Act 2002 s 21(9).

27 Commonhold and Leasehold Reform Act 2002 s 21(9).

28 See note 9. At the date at which this volume states the law, no such regulations had been made.

29 As to the meaning of 'commonhold community statement' see PARA 311.

30 Commonhold and Leasehold Reform Act 2002 s 21(10).

31 Commonhold and Leasehold Reform Act 2002 s 21(10)(a). The reference in the text is a reference to units created by virtue of s 21(9).

An application to register a transfer of the freehold estate in part only of a commonhold unit must be accompanied by an application in the prescribed form to register the commonhold community statement that has been amended in relation to the transfer: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r

15(1). For the prescribed form see Sch 1, Form CM3. The registrar may reject on delivery the application to register the transfer, or he may cancel it at any time thereafter, if it is not accompanied by an application to register the amended commonhold community statement: r 15(2). Normal scale fees are payable on the value of the transfer but no fee is payable to register the amended commonhold community statement as it accompanies the transfer: see Land Registry Practice Guide no 60 *Commonhold* (June 2009) para 7.5. For the prescribed scale fees see the Land Registration Fee Order 2009, SI 2009/845, art 3, Sch 1 Scale 1. As to the meaning of 'the registrar' see PARA 309 note 13.

On an application to which the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 15 relates and where the Commonhold and Leasehold Reform Act 2002 s 24(1) applies (see PARA 352), on receipt of the prescribed form (ie the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form COE: see PARA 352 note 26), the registrar must give effect in the register to the Commonhold and Leasehold Reform Act 2002 s 24(4) and (5) (see PARA 352), as appropriate: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 31.

32 Commonhold and Leasehold Reform Act 2002 s 21(10)(b). The reference in the text is a reference to units created or modified by virtue of s 21(9).

UPDATE

350 Interests in part only of a commonhold unit

NOTE 31--SI 2004/1830 Sch 1, Form CM3 amended: SI 2009/2024.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(3) OTHER TRANSACTIONS/351. Charges over part units.

351. Charges over part units.

It is not possible to create a charge¹ over part only of an interest² in a commonhold unit³, and an instrument⁴ or agreement is of no effect to the extent that it purports to create such a charge⁵. Where:

- 272 (1) land⁶ becomes commonhold land⁷ or is added to a commonhold unit⁸; and
- 273 (2) immediately before that event there is a charge over the land which could not be created after that event by reason of this prohibition⁹,

the charge is extinguished to the extent that it could not be so created¹⁰.

1 As to the creation of charges in commonhold units see PARA 348; and as to the meaning of 'commonhold unit' see PARA 330.

2 As to interests in commonhold units see PARA 348.

3 Commonhold and Leasehold Reform Act 2002 s 22(1).

4 As to the meaning of 'instrument' see PARA 332 note 15.

5 Commonhold and Leasehold Reform Act 2002 s 22(2).

6 As to the meaning of 'land' see PARA 301 note 2.

7 As to the meaning of 'commonhold land' see PARA 302.

8 Commonhold and Leasehold Reform Act 2002 s 22(3)(a).

9 Commonhold and Leasehold Reform Act 2002 s 22(3)(b). The prohibition referred to in the text is that contained in s 22(1): see the text and notes 1-3.

10 Commonhold and Leasehold Reform Act 2002 s 22(4).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(3) OTHER TRANSACTIONS/352. Changing the size of a commonhold unit.

352. Changing the size of a commonhold unit.

An amendment of a commonhold community statement¹ which redefines the extent of a commonhold unit² may not be made unless the unit-holder³ consents⁴:

- 274 (1) in writing⁵; and
- 275 (2) before the amendment is made⁶.

However, regulations⁷ may enable a court⁸ to dispense with the requirement for consent on the application of a commonhold association⁹ in prescribed¹⁰ circumstances¹¹.

Where an amendment of a commonhold community statement redefines the extent of a commonhold unit over which there is a registered¹² charge¹³, the amendment may not be made unless the registered proprietor¹⁴ of the charge consents¹⁵:

- 276 (a) in writing¹⁶; and
- 277 (b) before the amendment is made¹⁷.

However, regulations¹⁸ may enable a court to dispense with the requirement for consent on the application of a commonhold association in prescribed circumstances¹⁹. If the amendment removes land²⁰ from the commonhold unit, the charge is extinguished to the extent that it relates to the land which is removed²¹. If the amendment adds land to the unit²², the charge is extended so as to relate to the land which is added²³. Regulations²⁴ may make provision²⁵:

- 278 (i) requiring notice to be given to the registrar²⁶; and
- 279 (ii) requiring the registrar to alter²⁷ the register²⁸.

An application to register an amended commonhold community statement²⁹ which would have the effect of altering the extent of a commonhold unit, other than by removing the whole of the unit, must be accompanied by an application to register any relevant transfer³⁰. Where there is a relevant transfer, the registrar may reject on delivery the application to register the amended commonhold community statement, or he may cancel it at any time thereafter, if this requirement is not complied with³¹.

1 As to the amendment of a commonhold community statement see PARA 313; and as to the meaning of 'commonhold community statement' see PARA 311.

2 As to the meaning of 'commonhold unit' see PARA 330. As to changing the size of a unit which is subject to a registered charge see the text and notes 12-28.

3 As to the meaning of 'unit-holder' see PARA 331. In the application of the Commonhold and Leasehold Reform Act 2002 s 23(1) to a unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: s 13(2)(e). As to the meaning of 'joint unit-holder' see PARA 331.

4 Commonhold and Leasehold Reform Act 2002 s 23(1).

5 Commonhold and Leasehold Reform Act 2002 s 23(1)(a). As to the meaning of 'writing' see PARA 310 note 22.

6 Commonhold and Leasehold Reform Act 2002 s 23(1)(b).

7 As to the making of regulations under the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70) generally see PARA 301 note 12. At the date at which this volume states the law, no regulations had been made for the purposes of s 23.

8 As to the meaning of 'court' see PARA 301 note 17.

9 As to the meaning of 'commonhold association' see PARA 305.

10 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1, 'prescribed' means prescribed by regulations: s 64(1). See note 7.

11 Commonhold and Leasehold Reform Act 2002 s 23(2).

12 As to the meaning of 'registered' see PARA 309 note 10.

13 As to charges over commonhold units see PARAS 348, 351.

14 As to the proprietor of a charge see **LAND REGISTRATION; REAL PROPERTY**.

15 Commonhold and Leasehold Reform Act 2002 s 24(2). Consent is required because charges over part units are prohibited (see PARA 351), and where land is added to or subtracted from a unit the charge in relation to that part is either extended or extinguished accordingly (see the text and notes 20-23), thereby modifying the charge-holder's rights.

16 Commonhold and Leasehold Reform Act 2002 s 24(2)(a).

17 Commonhold and Leasehold Reform Act 2002 s 24(2)(b).

18 See note 7. At the date at which this volume states the law, no regulations had been made for the purposes of the Commonhold and Leasehold Reform Act 2002 s 24(3).

19 Commonhold and Leasehold Reform Act 2002 s 24(3).

20 As to the meaning of 'land' see PARA 301 note 2.

21 Commonhold and Leasehold Reform Act 2002 s 24(4).

22 As to adding land to the commonhold see PARA 325.

23 Commonhold and Leasehold Reform Act 2002 s 24(5).

24 The Commonhold Regulations 2004, SI 2004/1829, reg 10 applies to an amendment of a commonhold community statement which redefines the extent of a commonhold unit over which there is a registered charge: reg 10(1). See further notes 26, 28.

25 Commonhold and Leasehold Reform Act 2002 s 24(6).

26 In circumstances to which the Commonhold and Leasehold Reform Act 2002 s 24 applies: s 24(6)(a). As to the meaning of 'the registrar' see PARA 309 note 13.

The unit-holder of a commonhold unit over which there is a registered charge must give notice of the amendment to the registrar in the prescribed form: Commonhold Regulations 2004, SI 2004/1829, reg 10(2). In the application of reg 10(2) to a commonhold unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: reg 2(1)(a). For the prescribed form see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form COE.

27 In so as to reflect the application of the Commonhold and Leasehold Reform Act 2002 s 24(4) (see notes 20-21) or s 24(5) (see notes 22-23): s 24(6)(b). As to the meaning of 'the register' see PARA 309 note 10.

28 Commonhold and Leasehold Reform Act 2002 s 24(6)(b). On receipt of notification under the Commonhold Regulations 2004, SI 2004/1829, reg 10(2) (see note 26), the registrar must alter the register to reflect the application of the Commonhold and Leasehold Reform Act 2002 s 24(4) or (5): Commonhold Regulations 2004, SI 2004/1829, reg 10(3).

29 In an application in the prescribed form. For the prescribed form see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form CM3.

30 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 17(1). On an application to which r 17 relates and where the Commonhold and Leasehold Reform Act 2002 s 24(1) applies, on receipt of the prescribed form (ie the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form COE), the registrar must give effect in the register to the Commonhold and Leasehold Reform Act 2002 s 24(4) and (5) as appropriate: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 31.

31 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 17(2).

UPDATE

352 Changing the size of a commonhold unit

NOTE 29--SI 2004/1830 Sch 1, Form CM3 amended: SI 2009/2024.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/5. TRANSACTIONS INVOLVING COMMONHOLD LAND/(3) OTHER TRANSACTIONS/353. Compulsory purchase of commonhold land.

353. Compulsory purchase of commonhold land.

Where a freehold estate¹ in commonhold land² is transferred³ to a compulsory purchaser⁴ the land ceases to be commonhold land⁵, unless the registrar⁶ is satisfied that the compulsory purchaser has indicated a desire for the land transferred to continue to be commonhold land⁷.

Regulations⁸ may make provision about the transfer of a freehold estate in commonhold land to a compulsory purchaser⁹. The regulations may, in particular¹⁰:

- 280 (1) make provision about the effect of the provisions relating to the transfer of commonhold land to a compulsory purchaser (including provision about that part of the commonhold which is not transferred)¹¹;
- 281 (2) require the service of notice¹²;
- 282 (3) confer power on a court¹³;
- 283 (4) make provision about compensation¹⁴;
- 284 (5) make provision enabling a commonhold association¹⁵ to require a compulsory purchaser to acquire the freehold estate in the whole, or a particular part, of the commonhold¹⁶;
- 285 (6) provide for an enactment relating to compulsory purchase not to apply or to apply with modifications¹⁷.

1 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

2 As to the meaning of 'commonhold land' see PARA 302.

3 As to the transfer of the freehold estate in commonhold land see PARA 342.

4 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 60, 'compulsory purchaser' means:

88 (1) a person acquiring land in respect of which he is authorised to exercise a power of compulsory purchase by virtue of an enactment (s 60(7)(a)); and

89 (2) a person acquiring land which he is obliged to acquire by virtue of a prescribed enactment or in prescribed circumstances (s 60(7)(b)).

As to the meaning of 'person' see PARA 301 note 20; and as to the meaning of 'land' see PARA 301 note 2. For the purposes of Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12. At the date at which this volume states the law, no regulations had been made for the purposes of s 60.

The requirement of consent under s 21(2)(c) (see PARA 350) does not apply to transfer to a compulsory purchaser: s 60(3). As to compulsory purchase generally see **COMPULSORY ACQUISITION OF LAND**.

5 Commonhold and Leasehold Reform Act 2002 s 60(1).

6 As to the meaning of 'the registrar' see PARA 309 note 13.

7 Commonhold and Leasehold Reform Act 2002 s 60(2).

8 See note 4. At the date at which this volume states the law, no regulations had been made for these purposes.

9 Commonhold and Leasehold Reform Act 2002 s 60(4).

10 Commonhold and Leasehold Reform Act 2002 s 60(5).

11 Commonhold and Leasehold Reform Act 2002 s 60(5)(a). The provisions referred to are those contained in s 60(1), (2) (see the text and notes 1-7): s 60(5)(a). Provision made by virtue of s 60(5)(a) in respect of land which is not transferred may include provision:

90 (1) for some or all of the land to cease to be commonhold land (s 60(6)(a));

91 (2) for a provision of Pt 1 to apply with specified modifications (s 60(6)(b)).

12 Commonhold and Leasehold Reform Act 2002 s 60(5)(b).

13 Commonhold and Leasehold Reform Act 2002 s 60(5)(c). As to the meaning of 'court' see PARA 301 note
17.

14 Commonhold and Leasehold Reform Act 2002 s 60(5)(d).

15 As to the meaning of 'commonhold association' see PARA 305.

16 Commonhold and Leasehold Reform Act 2002 s 60(5)(e).

17 Commonhold and Leasehold Reform Act 2002 s 60(5)(f).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/6. TERMINATION OF COMMONHOLD/(1) INTRODUCTION/354. Methods by which a commonhold may be terminated.

6. TERMINATION OF COMMONHOLD

(1) INTRODUCTION

354. Methods by which a commonhold may be terminated.

In the case of a new development, a commonhold¹ may be terminated before the end of the transitional period² if the registered proprietor of the land³ makes an application to the registrar⁴ to cancel the registration of the freehold estate in land⁵ as a freehold estate in commonhold land⁶.

After the end of the transitional period, or in the case of an existing development which has been converted to commonhold⁷, a commonhold may be terminated:

- 286 (1) by the voluntary winding up of the commonhold association⁸;
- 287 (2) by the compulsory winding up of the commonhold association⁹;
- 288 (3) on the compulsory purchase of the commonhold land¹⁰, unless the registrar is satisfied that the compulsory purchaser has indicated a desire for the land transferred to continue to be commonhold land¹¹; or
- 289 (4) by order of the court¹²;
- 19 36. (a) where the commonhold has been registered in error¹³ and a person claiming to be adversely affected by the registration applies for a declaration that the land is to cease to be commonhold land¹⁴; or
- 37. (b) where a unit-holder¹⁵ makes an application for the rectification of certain documents¹⁶ and the court exercises its power to make provision for the relevant land to cease to be commonhold land¹⁷.
- 20

1 As to the meaning of 'commonhold' see PARA 301.

2 As to the meaning of 'transitional period' see PARA 323.

3 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**; and as to the meaning of 'land' see PARA 301 note 2.

4 I.e. under the Commonhold and Leasehold Reform Act 2002 s 8(4); see PARA 323. As to the meaning of 'the registrar' see PARA 309 note 13.

5 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq; and as to the registration of land generally see **LAND REGISTRATION**.

6 See the Commonhold and Leasehold Reform Act 2002 s 8(4); and PARA 323. As to the meaning of 'commonhold land' see PARA 302; and as to the registration of a freehold estate in land as commonhold land see PARA 320.

7 As to conversion to commonhold see PARA 302.

8 As to voluntary winding up see PARAS 355-358; and as to the meaning of 'commonhold association' see PARA 305.

9 As to compulsory winding up see PARAS 359-361.

- 10 See the Commonhold and Leasehold Reform Act 2002 s 60(1); and PARA 353.
- 11 See the Commonhold and Leasehold Reform Act 2002 s 60(2); and PARA 353.
- 12 Ie under the Commonhold and Leasehold Reform Act 2002 s 55: see PARA 361. As to the meaning of 'the court' see PARA 301 note 17.
- 13 Ie where the Commonhold and Leasehold Reform Act 2002 s 6(1) applies: see PARA 321.
- 14 Ie on an application under the Commonhold and Leasehold Reform Act 2002 s 6(3), (4) (see PARA 321): s 55(1). As to the meaning of 'person' see PARA 301 note 20.
- 15 As to the meaning of 'unit-holder' see PARA 331.
- 16 Ie on an application under the Commonhold and Leasehold Reform Act 2002 s 40: see PARA 340.
- 17 Ie the power under the Commonhold and Leasehold Reform Act 2002 s 40(3)(d) (see PARA 340): s 55(1).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/6. TERMINATION OF COMMONHOLD/(2) VOLUNTARY WINDING UP/355. Winding-up resolution in relation to commonhold association.

(2) VOLUNTARY WINDING UP

355. Winding-up resolution in relation to commonhold association.

A winding-up resolution¹ in respect of a commonhold association² is of no effect³ unless:

- 290 (1) the resolution is preceded by a declaration of solvency⁴;
- 291 (2) the commonhold association passes a termination statement resolution⁵ before it passes the winding-up resolution⁶; and
- 292 (3) each resolution is passed with at least 80 per cent of the members of the association⁷ voting in favour⁸.

Where a commonhold association has passed a winding-up resolution and a termination statement resolution with 100 per cent of the members of the association voting in favour⁹ and has appointed a liquidator¹⁰, the liquidator must make a termination application¹¹ within the period of six months beginning with the day on which the winding-up resolution is passed¹². If the liquidator fails to make a termination application within the specified period¹³, a termination application may be made by either a unit-holder¹⁴ or a person¹⁵ falling within a class prescribed¹⁶ for the purpose¹⁷.

Where a commonhold association has passed a winding-up resolution and a termination statement resolution with at least 80 per cent of the members of the association voting in favour¹⁸, and has appointed a liquidator¹⁹, the liquidator must within the period prescribed by regulations²⁰ apply to the court²¹ for an order determining²²:

- 293 (a) the terms and conditions on which a termination application may be made²³; and
- 294 (b) the terms of the termination statement to accompany a termination application²⁴.

The liquidator must make a termination application within the period of three months starting with the date on which such an order is made²⁵. If the liquidator fails to make an application for an order²⁶ or a termination application²⁷ within the period specified²⁸, an application of the same kind may be made by either a unit-holder²⁹ or a person falling within a class prescribed by regulations³⁰ for the purpose³¹.

1 For these purposes, 'winding-up resolution' means a resolution for voluntary winding up within the meaning of the Insolvency Act 1986 s 84 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 939): Commonhold and Leasehold Reform Act 2002 s 43(2).

2 As to the meaning of 'commonhold association' see PARA 305.

3 Commonhold and Leasehold Reform Act 2002 s 43(1).

4 Commonhold and Leasehold Reform Act 2002 s 43(1)(a). For these purposes, 'declaration of solvency' means a directors' statutory declaration made in accordance with the Insolvency Act 1986 s 89 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 941): Commonhold and Leasehold Reform Act 2002 s 43(2). As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.

5 For these purposes, 'termination statement resolution' means a resolution approving the terms of a termination statement (within the meaning of the Commonhold and Leasehold Reform Act 2002 s 47: see PARA 356): s 43(2).

6 Commonhold and Leasehold Reform Act 2002 s 43(1)(b).

7 As to membership of the commonhold association see PARA 310.

8 Commonhold and Leasehold Reform Act 2002 s 43(1)(c).

9 Commonhold and Leasehold Reform Act 2002 s 44(1)(a).

10 Commonhold and Leasehold Reform Act 2002 s 44(1)(b). The liquidator is appointed under the Insolvency Act 1986 s 91 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 950). See further PARA 357.

11 A termination application is made under the Commonhold and Leasehold Reform Act 2002 s 46: see PARA 356.

12 Commonhold and Leasehold Reform Act 2002 s 44(2).

13 Ie within the period specified in the Commonhold and Leasehold Reform Act 2002 s 44(2): see the text and notes 11-12.

14 Commonhold and Leasehold Reform Act 2002 s 44(3)(a). As to the meaning of 'unit-holder' see PARA 331.

15 As to the meaning of 'person' see PARA 301 note 20.

16 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12. At the date at which this volume states the law, no regulations had been made for these purposes.

17 Commonhold and Leasehold Reform Act 2002 s 44(3)(b).

18 Commonhold and Leasehold Reform Act 2002 s 45(1)(a).

19 Commonhold and Leasehold Reform Act 2002 s 45(1)(b). See note 10.

20 The application must be made within the period of three months beginning with the date on which the liquidator was appointed: Commonhold Regulations 2004, SI 2004/1829, reg 19(1).

21 As to the meaning of 'court' see PARA 301 note 17.

22 Commonhold and Leasehold Reform Act 2002 s 45(2).

23 Commonhold and Leasehold Reform Act 2002 s 45(2)(a); and see the Commonhold Regulations 2004, SI 2004/1829, reg 19(1)(a).

24 Commonhold and Leasehold Reform Act 2002 s 45(2)(b); and see the Commonhold Regulations 2004, SI 2004/1829, reg 19(1)(b).

25 Commonhold and Leasehold Reform Act 2002 s 45(3).

26 Ie an application under the Commonhold and Leasehold Reform Act 2002 s 45(2): see the text and notes 20-24.

27 Ie an application under the Commonhold and Leasehold Reform Act 2002 s 45(3): see the text and note 25.

28 Ie the period specified in either the Commonhold and Leasehold Reform Act 2002 s 45(2) (if an application for an order) (see the text and notes 20-24) or s 45(3) (if a termination application) (see the text and note 25).

29 Commonhold and Leasehold Reform Act 2002 s 45(4)(a).

30 See note 16.

31 Commonhold and Leasehold Reform Act 2002 s 45(4)(b).

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356. Termination application and statement in relation to commonhold land.

A 'termination application' is an application to the registrar¹ that all the land² in relation to which a particular commonhold association exercises functions³ should cease to be commonhold land⁴. A termination application must be accompanied by a termination statement⁵, which must specify⁶:

- 295 (1) the commonhold association's proposals for the transfer of the commonhold land following acquisition of the freehold estate⁷; and
- 296 (2) how the assets of the commonhold association will be distributed⁸.

The application must also be accompanied by the prescribed fee⁹.

A commonhold community statement¹⁰ may make provision requiring any termination statement to make arrangements of a specified kind¹¹, or determined in a specified manner¹², about the rights of unit-holders¹³ in the event of all the land to which the statement relates ceasing to be commonhold land¹⁴.

On receipt of a termination application the registrar must note it in the register¹⁵.

1 As to the meaning of 'the registrar' see PARA 309 note 13.

2 As to the meaning of 'land' see PARA 301 note 2.

3 As to the exercise by a commonhold association of functions in relation to commonhold land see PARA 302 note 8. As to the meaning of 'commonhold association' see PARA 305; and as to the meaning of 'commonhold land' see PARA 302.

4 Commonhold and Leasehold Reform Act 2002 s 46(1). A termination application must be made in the prescribed form, and must be accompanied by the order, appointment by the Secretary of State or resolution under which the liquidator was appointed and such other evidence as the registrar may require: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 21(1). For the prescribed form see Sch 1, Form CM5.

5 Commonhold and Leasehold Reform Act 2002 s 46(2). A termination statement is made under s 47: see the text and notes 6-14.

6 Commonhold and Leasehold Reform Act 2002 s 47(1).

7 Commonhold and Leasehold Reform Act 2002 s 47(1)(a). The freehold estate may be acquired in accordance with s 49(3): see PARA 358. As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

8 Commonhold and Leasehold Reform Act 2002 s 47(1)(b).

9 For the prescribed fee for a termination application see the Land Registration Fee Order 2009, SI 2009/845, Sch 3 Pt 1 para (21).

10 As to the meaning of 'commonhold community statement' see PARA 311.

11 Commonhold and Leasehold Reform Act 2002 s 47(2)(a).

12 Commonhold and Leasehold Reform Act 2002 s 47(2)(b).

13 As to the meaning of 'unit-holder' see PARA 331. In the application of the Commonhold and Leasehold Reform Act 2002 s 47(2) to a unit with joint unit-holders, a reference to a unit-holder is a reference to the joint unit-holders together: s 13(2)(i). As to the meaning of 'joint unit-holder' see PARA 331.

14 Commonhold and Leasehold Reform Act 2002 s 47(2). A termination statement must comply with a provision made by the commonhold community statement in reliance on s 47(2): s 47(3). However, s 47(3) may be disapplied by an order of the court: (1) generally; (2) in respect of specified matters; or (3) for a specified purpose: s 47(4). An application for such an order may be made by any member of the commonhold association: s 47(5). These provisions allow the court to take into account circumstances which have changed since the commonhold community statement reached its final state and to allow challenges to be made to the fairness of the statement in this respect. As to the meaning of 'court' see PARA 301 note 17.

15 Commonhold and Leasehold Reform Act 2002 s 46(3). As to the meaning of 'the register' see PARA 309 note 10.

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357. Action by the liquidator in relation to commonhold land.

Where a termination application¹ has been made in respect of particular commonhold land², the following provisions apply³.

The liquidator⁴ must notify the registrar⁵ of his appointment⁶. In the case of a termination application made with 100 per cent agreement⁷, the liquidator must⁸ either:

- 297 (1) notify the registrar that the liquidator is content with the termination statement⁹ submitted with the termination application¹⁰; or
- 298 (2) apply to the court¹¹ to determine the terms of the termination statement¹².

A duty imposed on the liquidator by these provisions¹³ must be performed as soon as possible¹⁴.

1 As to the meaning of 'termination application' see PARA 356.

2 As to the meaning of 'commonhold land' see PARA 302.

3 Commonhold and Leasehold Reform Act 2002 s 48(1).

4 For the purposes of the Commonhold and Leasehold Reform Act 2002 s 48, a reference to the liquidator is a reference:

92 (1) to the person who is appointed as liquidator under the Insolvency Act 1986 s 91 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 951) (Commonhold and Leasehold Reform Act 2002 s 48(7)(a)); or

93 (2) in the case of a members' voluntary winding up which becomes a creditors' voluntary winding up by virtue of the Insolvency Act 1986 ss 95, 96 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 942), to the person acting as liquidator in accordance with s 100 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 953) (Commonhold and Leasehold Reform Act 2002 s 48(7)(b)).

As to the meaning of 'person' see PARA 301 note 20.

5 As to the meaning of 'the registrar' see PARA 309 note 13.

6 Commonhold and Leasehold Reform Act 2002 s 48(2).

7 Ie where the termination application is made under the Commonhold and Leasehold Reform Act 2002 s 44: see PARA 355.

8 Commonhold and Leasehold Reform Act 2002 s 48(3).

9 As to the termination statement see PARA 356.

10 Commonhold and Leasehold Reform Act 2002 s 48(3)(a).

11 Such an application is made under the Insolvency Act 1986 s 112: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1012. As to the meaning of 'court' see PARA 301 note 17.

12 Commonhold and Leasehold Reform Act 2002 s 48(3)(b). The liquidator must send to the registrar a copy of a determination made by virtue of this provision (s 48(4)), in addition to any requirement under the Insolvency Act 1986 s 112(3) (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1012) (Commonhold and Leasehold Reform Act 2002 s 48(5)).

- 13 le the Commonhold and Leasehold Reform Act 2002 s 48.
- 14 Commonhold and Leasehold Reform Act 2002 s 48(6).

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358. Registration of commonhold association as freeholder on termination application being made.

Where a termination application¹ is made² (and, in the case of a termination application made with 100 per cent agreement³: (1) a liquidator⁴ notifies the registrar⁵ that he is content with a termination statement⁶; or (2) a determination is made⁷), then the commonhold association⁸ is entitled⁹ to be registered¹⁰ as the proprietor¹¹ of the freehold estate¹² in each commonhold unit¹³, and the registrar must take such action as appears to him to be appropriate for the purpose of giving effect to the termination statement¹⁴. The registrar must:

- 299 (a) enter the commonhold association as proprietor of the commonhold units;
and
- 300 (b) cancel the commonhold entries on every registered title affected¹⁵.

1 As to the meaning of 'termination application' see PARA 356.

2 Such an application may be made either under the Commonhold and Leasehold Reform Act 2002 s 44 or under s 45, depending upon whether 100% or only 80% of the members of the association vote in favour of the winding-up resolution and termination statement resolution: see PARA 355. As to the meaning of 'winding-up resolution' see PARA 355 note 1; and as to the termination statement see PARA 356.

3 Ie an application made under the Commonhold and Leasehold Reform Act 2002 s 44: see note 2; and PARA 355.

4 As to the liquidator see PARA 357.

5 The notification is made under the Commonhold and Leasehold Reform Act 2002 s 48(3)(a): see PARA 357. As to the meaning of 'the registrar' see PARA 309 note 13.

6 Commonhold and Leasehold Reform Act 2002 s 49(1)(a).

7 Commonhold and Leasehold Reform Act 2002 s 49(1)(b). Such a determination is made under the Insolvency Act 1986 s 112 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1012) by virtue of the Commonhold and Leasehold Reform Act 2002 s 48(3)(b) (see PARA 357). The liquidator must send the registrar a copy of the court's determination of the terms of the termination statement: see the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 21(2).

8 As to the meaning of 'commonhold association' see PARA 305.

9 Ie by virtue of the Commonhold and Leasehold Reform Act 2002 s 49(3).

10 As to the meaning of 'registered' see PARA 309 note 10.

11 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.

12 As to the registration of a freehold estate in commonhold land see PARA 320.

13 Commonhold and Leasehold Reform Act 2002 s 49(2), (3). As to the meaning of 'commonhold unit' see PARA 330.

14 Commonhold and Leasehold Reform Act 2002 s 49(2), (4).

15 Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 21(2).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/6. TERMINATION OF COMMONHOLD/(3) WINDING UP BY THE COURT/359. Succession order in relation to insolvent commonhold association.

(3) WINDING UP BY THE COURT

359. Succession order in relation to insolvent commonhold association.

Where a petition is presented for the winding up¹ of a commonhold association² by the court³, the following provisions apply⁴.

At the hearing of the winding-up petition, an application may be made to the court for an order (a 'succession order')⁵ in relation to the insolvent commonhold association⁶. Such an application may be made⁷ only by:

- 301 (1) the insolvent commonhold association⁸;
- 302 (2) one or more members of the insolvent commonhold association⁹; or
- 303 (3) a provisional liquidator for the insolvent commonhold association¹⁰.

The application must be accompanied¹¹ by:

- 304 (a) prescribed¹² evidence of the formation of a successor commonhold association¹³; and
- 305 (b) a certificate given by the directors¹⁴ of the successor commonhold association that its memorandum and articles of association¹⁵ comply with regulations¹⁶.

The court must grant the application unless it thinks that the circumstances of the insolvent commonhold association make a succession order inappropriate¹⁷.

The succession order:

- 306 (i) must make provision as to the treatment of any charge¹⁸ over all or any part of the common parts¹⁹;
- 307 (ii) may require the registrar²⁰ to take action of a specified kind²¹;
- 308 (iii) may enable the liquidator²² to require the registrar to take action of a specified kind²³; and
- 309 (iv) may make supplemental or incidental provision²⁴.

Where a succession order is made in relation to an insolvent commonhold association, then on the making of a winding-up order²⁵ in respect of the association²⁶:

- 310 (A) the successor commonhold association is entitled to be registered²⁷ as the proprietor²⁸ of the freehold estate²⁹ in the common parts³⁰;
- 311 (B) the insolvent commonhold association must for all purposes cease to be treated as the proprietor of the freehold estate in the common parts³¹;
- 312 (C) the successor commonhold association must be treated as the commonhold association for the commonhold in respect of any matter which relates to a time after the making of the winding-up order³²; and
- 313 (D) the court may make an order³³ requiring the liquidator to make available to the successor commonhold association specified records³⁴, copies of records³⁵, or information³⁶.

- 1 le where a petition is presented under the Insolvency Act 1986 s 124: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1227.
- 2 As to the meaning of 'commonhold association' see PARA 305.
- 3 As to the meaning of 'court' see PARA 301 note 17.
- 4 Commonhold and Leasehold Reform Act 2002 s 50(1).
- 5 le an order under the Commonhold and Leasehold Reform Act 2002 s 51: see notes 6-17.
- 6 Commonhold and Leasehold Reform Act 2002 s 51(1). For these purposes, an 'insolvent commonhold association' is one in relation to which a winding-up petition has been presented under the Insolvency Act 1986 s 124 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1227): Commonhold and Leasehold Reform Act 2002 s 50(2)(a).
- 7 Commonhold and Leasehold Reform Act 2002 s 51(2).
- 8 Commonhold and Leasehold Reform Act 2002 s 51(2)(a).
- 9 Commonhold and Leasehold Reform Act 2002 s 51(2)(b). As to membership of a commonhold association see PARA 310.
- 10 Commonhold and Leasehold Reform Act 2002 s 51(2)(c). A provisional liquidator is appointed under the Insolvency Act 1986 s 135: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 491.
- 11 Commonhold and Leasehold Reform Act 2002 s 51(3).
- 12 For the purposes of the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70), 'prescribed' means prescribed by regulations: s 64(1). As to the making of regulations under Pt 1 generally see PARA 301 note 12.
- 13 Commonhold and Leasehold Reform Act 2002 s 51(3)(a). An application under s 51(1) must be accompanied by the certificate of incorporation of the successor commonhold association given in accordance with the Companies Act 1985 s 13 and any altered certificates of incorporation issued under s 28: Commonhold Regulations 2004, SI 2004/1829, reg 19(2). With effect from 1 October 2009, the Companies Act 1985 ss 13, 28 are repealed by the Companies Act 2006 Sch 16 and replaced by provisions of the Companies Act 2006 ss 15, 16, 67, 68, 75, 77, 80, 81: see further **COMPANIES**. A commonhold association is the 'successor commonhold association' to an insolvent commonhold association if the land specified for the purpose of the Commonhold and Leasehold Reform Act 2002 s 34(1)(a) (see PARA 305) is the same for both associations: s 50(2)(b). As to the meaning of 'land' see PARA 301 note 2.
- 14 As to the appointment and removal of directors generally see PARA 308; and **COMPANIES** vol 14 (2009) PARA 483 et seq.
- 15 As to the memorandum and articles of association of the commonhold association see PARA 306.
- 16 Commonhold and Leasehold Reform Act 2002 s 51(3)(b). The regulations referred to in the text are those made under Sch 3 para 2(1): see PARA 306.
- 17 Commonhold and Leasehold Reform Act 2002 s 51(4). As to the termination of a commonhold association in circumstances where the court has not made a succession order see PARA 360.
- 18 As to charges generally see PARA 348.
- 19 Commonhold and Leasehold Reform Act 2002 s 52(4)(a). As to the meaning of 'common parts', and as to charges over common parts, see PARA 332. See also the Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 23(4), cited in note 30.
- 20 As to the meaning of 'the registrar' see PARA 309 note 13.
- 21 Commonhold and Leasehold Reform Act 2002 s 52(4)(b); and see note 19.
- 22 As to the liquidator see note 10.
- 23 Commonhold and Leasehold Reform Act 2002 s 52(4)(c); and see note 19.

24 Commonhold and Leasehold Reform Act 2002 s 52(4)(d); and see note 19.

25 For these purposes, a 'winding-up order' is an order under the Insolvency Act 1986 s 125 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 477) for the winding up of a commonhold association: Commonhold and Leasehold Reform Act 2002 s 50(2)(c).

26 Commonhold and Leasehold Reform Act 2002 ss 52(1), 53(1).

27 As to the meaning of 'registered' see PARA 309 note 10.

28 As to the proprietor of an estate in land see **LAND REGISTRATION; REAL PROPERTY**.

29 As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.

30 Commonhold and Leasehold Reform Act 2002 s 52(2). Where a succession order is made, an application must be made to the registrar in the prescribed form to register the successor commonhold association: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 23(1). For the prescribed form see Sch 1, Form CM6. Unless the registrar otherwise directs, the application must be accompanied by (1) the succession order; (2) the memorandum and articles of association of the successor commonhold association; and (3) the winding-up order: r 23(2). When satisfied that the application is in order, the registrar must (a) cancel the note of the memorandum and articles of association of the insolvent commonhold association in the property register of the registered title to the common parts; (b) enter a note of the memorandum and articles of association of the successor commonhold association in the property register of the registered title to the common parts; and (c) give effect to the terms of the succession order in the individual registers of the registered titles affected: r 23(3). Where a succession order includes provisions falling within the Commonhold and Leasehold Reform Act 2002 s 52(4) (see heads (i)-(iv) in the text), the successor commonhold association must make an application to give effect in the register to those provisions so far as necessary: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 23(4). There is no fee payable to give effect to the court order, but, if changes to the commonhold community statement are required, two new certified copies of the commonhold community statement must be prepared and lodged with the Land Registry using the prescribed form (ie the Commonhold (Land Registration) Rules 2004, SI 2004/1830, Sch 1, Form CM3: see PARA 326) and fees paid if appropriate (see PARA 326): see Land Registry Practice Guide no 60 *Commonhold* (June 2009) para 7.6.

31 Commonhold and Leasehold Reform Act 2002 s 52(3).

32 Commonhold and Leasehold Reform Act 2002 s 53(2).

33 An order under the Commonhold and Leasehold Reform Act 2002 s 53(3) may include terms as to timing and payment: s 53(4).

34 Commonhold and Leasehold Reform Act 2002 s 53(3)(a).

35 Commonhold and Leasehold Reform Act 2002 s 53(3)(b).

36 Commonhold and Leasehold Reform Act 2002 s 53(3)(c).

UPDATE

359 Succession order in relation to insolvent commonhold association

NOTE 13--References to Companies Act 1985 ss 13, 28 now to Companies Act 2006 ss 15 (see **COMPANIES** vol 14 (2009) PARA 119), 80 (see **COMPANIES** vol 14 (2009) PARA 219): SI 2004/1829 reg 19(2) (amended by SI 2009/2363).

TEXT AND NOTE 16--Commonhold and Leasehold Reform Act 2002 s 51(3)(b) amended: SI 2009/1941.

NOTE 30--SI 2004/1830 r 23(2), (3), Sch 1, Form CM6 amended: SI 2009/2024.

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/6. TERMINATION OF COMMONHOLD/(3) WINDING UP BY THE COURT/360. Termination of commonhold where no succession order made in relation to insolvent commonhold association.

360. Termination of commonhold where no succession order made in relation to insolvent commonhold association.

Where the court¹:

- 314 (1) makes a winding-up order² in respect of a commonhold association³; and
- 315 (2) has not made a succession order⁴ in respect of the commonhold association⁵,

the following provisions apply⁶.

The liquidator⁷ of a commonhold association must as soon as possible notify the registrar⁸ of:

- 316 (a) the fact that these provisions apply⁹;
- 317 (b) any directions given under the Insolvency Act 1986¹⁰;
- 318 (c) any notice given to the court and the registrar of companies¹¹ in accordance with the Insolvency Act 1986¹²;
- 319 (d) any notice given to the Secretary of State¹³;
- 320 (e) any application made to the registrar of companies¹⁴;
- 321 (f) any notice given to the registrar of companies¹⁵; and
- 322 (g) any other matter which in the liquidator's opinion is relevant to the registrar¹⁶.

Notification under heads (b) to (f) above must be accompanied by a copy of the directions, notice or application concerned¹⁷.

The registrar must¹⁸:

- 323 (i) make such arrangements as appear to him to be appropriate for ensuring that the freehold estate in land¹⁹ in respect of which a commonhold association exercises functions²⁰ ceases to be registered²¹ as a freehold estate in commonhold land as soon as is reasonably practicable after he receives notification under heads (c) to (f) above²²; and
- 324 (ii) take such action as appears to him to be appropriate for the purpose of giving effect to a determination made by the liquidator in the exercise of his functions²³.

1 As to the meaning of 'court' see PARA 301 note 17.

2 As to the meaning of 'winding-up order' see PARA 359 note 25.

3 Commonhold and Leasehold Reform Act 2002 s 54(1)(a). As to the meaning of 'commonhold association' see PARA 305.

4 As to the meaning of 'succession order' see PARA 359.

5 Commonhold and Leasehold Reform Act 2002 s 54(1)(b).

6 Commonhold and Leasehold Reform Act 2002 s 54(1).

7 As to the liquidator see PARA 357.

- 8 As to the meaning of 'the registrar' see PARA 309 note 13.
- 9 Commonhold and Leasehold Reform Act 2002 s 54(2)(a).
- 10 Commonhold and Leasehold Reform Act 2002 s 54(2)(b). The directions referred to in the text are those given under the Insolvency Act 1986 s 168 (supplementary powers of liquidator): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1239.
- 11 As to the registrar of companies see **COMPANIES** vol 14 (2009) PARA 131.
- 12 Commonhold and Leasehold Reform Act 2002 s 54(2)(c). Notice may be given in accordance with the Insolvency Act 1986 s 172(8) (liquidator vacating office after final meeting): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 618.
- 13 Commonhold and Leasehold Reform Act 2002 s 54(2)(d). Notice may be given to the Secretary of State under the Insolvency Act 1986 s 174(3) (completion of winding up): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 624.
- 14 Commonhold and Leasehold Reform Act 2002 s 54(2)(e). An application may be made to the registrar of companies under the Insolvency Act 1986 s 202(2) (insufficient assets: early dissolution): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 929.
- 15 Commonhold and Leasehold Reform Act 2002 s 54(2)(f). Notice may be given to the registrar of companies under the Insolvency Act 1986 s 205(1)(b) (completion of winding up): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 931.
- 16 Commonhold and Leasehold Reform Act 2002 s 54(2)(g).
- 17 Commonhold and Leasehold Reform Act 2002 s 54(3).
- 18 Commonhold and Leasehold Reform Act 2002 s 54(4).
- 19 As to the meaning of 'land' see PARA 301 note 2. As to the freehold estate in land see **REAL PROPERTY** vol 39(2) (Reissue) PARA 91 et seq.
- 20 As to the exercise by a commonhold association of functions in relation to commonhold land see PARA 302 note 8; and as to the meaning of 'commonhold land' see PARA 302.
- 21 As to the meaning of 'registered' see PARA 309 note 10.
- 22 Commonhold and Leasehold Reform Act 2002 s 54(4)(a). An application to terminate a commonhold registration where the court has made a winding-up order in respect of a commonhold association and has not made a succession order must be made in the prescribed form: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 22(1). For the prescribed form see Sch 1, Form CM5. When the registrar has received notification under the Commonhold and Leasehold Reform Act 2002 s 54(2)(c)-(f) (see heads (c)-(f) in the text), and is otherwise satisfied that the application is in order, he may cancel the commonhold entries on the registered titles affected: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 22(2).
- 23 Commonhold and Leasehold Reform Act 2002 s 54(4)(b).

Halsbury's Laws of England/COMMONHOLD (VOLUME 13 (2009) 5TH EDITION)/6. TERMINATION OF COMMONHOLD/(4) TERMINATION BY ORDER OF THE COURT/361. Termination of commonhold by the court.

(4) TERMINATION BY ORDER OF THE COURT

361. Termination of commonhold by the court.

Where the court¹ makes an order by virtue of its statutory powers²:

- 325 (1) where the commonhold has been registered in error³ and a person claiming to be adversely affected by the registration applies for a declaration that the land is to cease to be commonhold land⁴; or
- 326 (2) where a unit-holder⁵ makes an application for the rectification of certain documents⁶,

for all the land⁷ in relation to which a commonhold association exercises functions⁸ to cease to be commonhold land⁹:

- 327 (a) the court has the powers which it would have if it were making a winding-up order¹⁰ in respect of the commonhold association¹¹; and
- 328 (b) a person appointed under these provisions as liquidator¹² has the powers and duties of a liquidator following the making of a winding-up order by the court in respect of a commonhold association¹³.

The order of the court¹⁴ may, however:

- 329 (i) require the liquidator to exercise his functions in a particular way¹⁵;
- 330 (ii) impose additional rights or duties on the liquidator¹⁶;
- 331 (iii) modify or remove a right or duty of the liquidator¹⁷.

1 As to the meaning of 'court' see PARA 301 note 17.

2 It makes an order by virtue of the Commonhold and Leasehold Reform Act 2002 s 6(6)(c) (see PARA 321) or s 40(3)(d) (see PARA 340).

3 It is where the Commonhold and Leasehold Reform Act 2002 s 6(1) applies: see PARA 321.

4 It is on an application under the Commonhold and Leasehold Reform Act 2002 s 6(3), (4): see PARA 321. As to the meaning of 'person' see PARA 301 note 20.

5 As to the meaning of 'unit-holder' see PARA 331.

6 It is on an application under the Commonhold and Leasehold Reform Act 2002 s 40: see PARA 340.

7 As to the meaning of 'land' see PARA 301 note 2.

8 As to the exercise by a commonhold association of functions in relation to commonhold land see PARA 302 note 8. As to the meaning of 'commonhold association' see PARA 305; and as to the meaning of 'commonhold land' see PARA 302.

9 Commonhold and Leasehold Reform Act 2002 s 55(1). The land then becomes vested without further assurance. An application to give effect in the register to an order of the court under s 55 must be made in the prescribed form: Commonhold (Land Registration) Rules 2004, SI 2004/1830, r 12. For the prescribed form see

the Land Registration Rules 2003, SI 2003/1417, Sch 1, Form AP1. There is no fee payable: see Land Registry Practice Guide no 60 *Commonhold* (June 2009) para 7.7.3.

10 As to the meaning of 'winding-up order' see PARA 359 note 25.

11 Commonhold and Leasehold Reform Act 2002 s 55(2).

12 Is a person appointed by virtue of the Commonhold and Leasehold Reform Act 2002 s 55(2): see the text and note 11. As to the liquidator see PARA 357.

13 Commonhold and Leasehold Reform Act 2002 s 55(3). As to the powers and duties of a liquidator following the making of a winding-up order see PARA 360.

14 Is an order made by virtue of the Commonhold and Leasehold Reform Act 2002 s 6(6)(c) (see PARA 321) or s 40(3)(d) (see PARA 340).

15 Commonhold and Leasehold Reform Act 2002 s 55(4)(a).

16 Commonhold and Leasehold Reform Act 2002 s 55(4)(b).

17 Commonhold and Leasehold Reform Act 2002 s 55(4)(c).

---- End of Request ----

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